United States

Circuit Court of Appeals

For the Ninth Circuit.

ASMA RUBAIZ,

Appellant,

VS.

THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation, TUC-SON RAPID TRANSIT COMPANY, a Corporation, THE INTERNATIONAL TRUST COMPANY, a Corporation, and EDWIN F. JONES, as Receiver,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Arizona.





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

Messrs. RICHEY & RICHEY and Messrs. MOORE & FRAWLEY, Tucson, Arizona, Solicitors for Appellant.

Messrs. KINGAN & CAMPBELL, Tucson, Arizona, GEORGE O. HILZINGER, Esq., Tucson, Arizona, Solicitors for Appellees.

EDWIN F. JONES, Receiver, Tucson, Arizona.

In the District Court of the United States, in and

for the District of Arizona.

IN EQUITY—No. 70—TUCSON.

(Tucson)

THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,

Plaintiff,

VS.

THE TUSCON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Complaint.

Comes now the plaintiff, The Tucson, Gas, Electric Light and Power Company, and respectfully shows:

I.

That it is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Colo-

rado, and is now and at all times hereinafter mentioned was a citizen and resident of said state; that the defendant, The Tucson Rapid Transit Company, is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the Territory now State of Arizona, and that it is now and at all times hereinafter mentioned was a resident and citizen of the said State of Arizona.

II.

That the said defendant is the owner of and is operating a system of street railway in the City of Tucson, Pima County, Arizona, and has been operating and conducting said railway ever since 1906 to the present time, and is the owner of the said railway including the right of way, rails, rolling stock, certain real estate, franchises, and all property used in the operation of said street railway; and that said defendant is a common carrier.

III.

That the said defendant is indebted to the plaintiff in the sum of Sixty-two Thousand Sixty-two Dollars and Forty-three Cents (\$62,062.43) for moneys loaned and advanced by the plaintiff to said defendant, and that said indebtedness is evidenced by certain promissory notes executed by the defendant unto the plaintiff as follows: A demand note dated February 10, 1915, in the sum of [1*]

^{*}Page-number appearing at foot of page of original certified Transcript of Record.

Twenty-five Thousand (\$25,000.00) Dollars; which has been renewed, payable on demand; a demand note dated March 20, 1916, in the sum of Fifteen Thousand (\$15,000.00) Dollars; a demand note dated November 30, 1917, in the sum of Twenty Thousand (\$20,000.00) Dollars. That there is due accrued interest upon said notes in upwards the sum of Two Thousand (\$2,000.00) Dollars. That plaintiff has demanded payment of said notes and of each of them with the interest, and that said payment has been refused, and that each and all of said notes, together with said interest, are now due owing and unpaid from the defendant to the plaintiff.

IV.

That on the 15th day of March, 1906, the said defendant executed a certain deed of trust to The International Trust Company, a corporation organized and existing under the laws of the State of Colorado and having its principal place of business in the city of Denver in said state, and did mortgage to said Trustee at said time all of its property, real, personal and mixed, that it then had or might thereafter acquire or become possessed of; that said deed of trust was executed to secure the payment of certain bonds about to be issued by defendant in the aggregate principal sum of Three Hundred Thousand (\$300,000.00) Dollars, together with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually, and evi-

denced by coupons to be attached to said bonds, and that said bonds were payable twenty-two (22) years from their said date, to wit, the 15th day of March (2), 1906; that it was provided in said deed of trust that bonds thereunder in the aggregate amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) should be at once issued and certified and that the remainder of said bonds, to wit, One Hundred and Fifty Thousand (\$150,000,00) Dollars, should be issued and certified only after expenditures for new construction or new equipment. all as provided in said deed of trust; that said instrument was executed on or about the date aforesaid, to wit, the 15th day of March, 1906, and filed and recorded in the office of the County Recorder of the said County of Pima; that under said deed of trust and out of the One Hundred and Fifty Thousand (\$150,000.00) Dollars of bonds therein [2] provided to be issued forthwith there were issued and disposed of by the said defendant company bonds aggregating the total amount of One Hundred and Fourteen Thousand Eight Hundred (\$114,800.00) Dollars, and that as plaintiff is advised and believes, and upon such information avers, no other or further bonds than the said last-mentioned amount were issued or certified under said deed of trust; that the whole of said amount of One Hundred and Fourteen Thousand Eight Hundred (\$14,800.00) Dollars par value of said bonds are now outstanding and have not been paid in whole

or in part; that since the year 1910 the defendant has not paid any interest upon said bonds and that the whole of said interest from and after the year 1910 up to the present time is now unpaid and is due and owing unto the holders of said bonds, and that said interest now accrued and unpaid amounts to upwards the sum of Seventy-three Thousand (\$73,000.00) Dollars; that demand for the payment of said interest has been made, as plaintiff is advised and believes and so avers, and that said demand has been refused, and that the whole of said interest, as aforesaid, is now due, owing and unpaid by the defendant to the holders and owners of said bonds.

V.

That for many years last past the said defendant company (3) in the operation of the said street railway line has not been able to earn its interest and operating charges and that said defendant is now insolvent.

VI.

That in the month of January, 1918, an action was brought against said defendant company by one Asma Rubiaz for alleged personal injuries occasioned to her by the alleged negligence of the servants and employees of the defendant company, and that in the month of June, 1918, a judgment was obtained by said plaintiff in said action against the said defendant in the sum of approximately Four Thousand Five Hundred (\$4,500.00) Dollars,

and that the whole of said judgment now remains unpaid.

VII.

That if the said creditors of the said defendant or the owner of said judgment in said personal injury action should press [3] their said demands it might and would result in consequences disastrous to the public in the operation of said street railway by possible sale and dismemberment of the said railway system and which might and possibly would prevent the operation of said street railway and might result in sales of portions of the property and equipment of said company to different individuals or corporations by which it would be impossible to continue the carrying of passengers as heretofore, and the sale of the said property of the said defendant would probably be for a sum below its value, and thus the security for all of the creditors for the ultimate payment of their claims would be impaired. That the said defendant is, as above stated, insolvent and unable to pay the various obligations of indebtedness or claims of indebtedness heretofore mentioned and set forth.

WHEREFORE, plaintiff prays: (4)

1. That plaintiff have judgment against the defendant in the sum of Sixty Thousand (\$60,000.00) Dollars, together with interest thereon on Twenty-five Thousand (\$25,000.00) Dollars from February 10, 1915, and on Fifteen Thousand (\$15,000.00) Dollars

from March 20, 1916, and on Twenty Thousand (\$20,-000.00) Dollars from November 30, 1917, at the rate of eight per cent (8%) per annum.

That this Honorable Court take the said property of the said defendant company into its possession and that the creditors of the defendant, or any and all persons having claims or demands against said defendant, be required to present the same and that said claims be ascertained and determined, and that the Court fully administer the fund obtained and the assets of the said defendant company and that the said assets be marshaled and the respective lien or liens and priorities existing therein be ascertained and that the Court enforce and decree the rights, liens and equities of all creditors or persons having claims upon or against the defendant as the same may be finally ascertained by the Court; and that for the purpose of preserving the property of the said defendant a receiver be appointed with power to collect all of the assets of the defendant company and that authority to run and operate said street railway system and to col-[4] and receive all moneys due and apply lect the income thereof under the direction of the Court and for such period as the Court may order, and that for the purpose of protecting and preserving the property of the said defendant company from being sacrified under proceedings liable to be taken and which might prejudice the same, and that temporarily and pending the suit an injunction might

issue against the defendant and all persons claiming to act by, through, or under it, and all other persons, restraining them and each and all of them from interfering with the Receiver taking possession of and operating the property. And that plaintiff have such (5) other and further relief as to the Court may seem just and proper, together with its costs in this behalf expended.

KINGAN & CAMPBELL, Attorneys for Plaintiff.

State of Arizona, County of Pima,—ss.

Frank E. Russell, being first duly sworn, on his oath says: That he is the general manager of the plaintiff corporation and makes this affidavit on its behalf; that he has read the foregoing complaint and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters stated on information and belief, and as to them that he believes it to be true.

FRANK E. RUSSELL.

Subscribed and sworn to before me this 20th day of February, 1919.

[Seal]

G. H. LANGWORTHY,

Notary Public.

My commission expires Nov. 19, 1921. (6)

[Endorsed]: No. E-70 (Tucson). In the District Court of the United States, in and for the District of Arizona. The Tucson Gas, Electric

Light & Power Company, a Corporation, Plaintiff, vs. The Tucson Rapid Transit Company, a Corporation, Defendant. Filed Feb. 20, 1919. Mose Drachman, Clerk. By Effie D. Botts, Chief Deputy Clerk. [5]

In the District Court of the United States, in and for the District of Arizona.

IN EQUITY—No. 70—TUCSON.

(Tucson.)

THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,

Plaintiff,

VS.

THE TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Answer.

The Tucson Rapid Transit Company, a corporation, the defendant in this action, for answer to the bill of complaint herein, answering says:

I.

The defendant admits all the allegations of said bill of complaint.

II.

The defendant reiterating the admission of the preceding article of this answer, joins in the prayer of said bill of complaint, and prays that this Court,

sitting in equity, may take possession of the property of the defendant through the appointment of a receiver, as prayed for in said bill of complaint, and thereby preserve the unity of the property of the defendant as it has been maintained and operated, and protect and preserve the corporate franchises, privileges and property, and preserve the corporate existence of the defendant, and protect and preserve its said property, real, personal and mixed, from (1) being sacrificed under any proceedings which can or may be taken liable to prejudice or sacrifice the same, and to do any and all acts which may be necessary to preserve the valuable rights and franchises of the defendant, and it accordingly prays that inasmuch as there is no adequate remedy at law in the premises for the complainant or for the defendant, that this Court will, for the purposes aforesaid, appoint a receiver, as prayed for in said bill of complaint, and empower and authorize such receiver to take possession of the entire property of this defendant, and to preserve, manage, operate and control the same, and as far [6] as possible pay all indebtedness due or to become due by this defendant, and otherwise discharge all the duties ordinarily imposed by Courts upon receivers in similar cases.

That on the final hearing in this cause, this Court will under said bill of complaint and this answer, or such supplemental bill as shall be filed herein, make such decree or decrees with respect to the

property of this defendant as shall deal with the same on general equitable principles, and that this Court will cause all the liens upon said property, or any part thereof, and all rights and claims in equity of persons interested therein, to be ascertained, defined and determined, and that the proceeds arising from the operation and sale, if any is ordered, of said property, or any part thereof be applied under the said orders or decrees of this Court according to the rights, interests and equities of the parties interested therein, and that the Court will direct all persons in possession of property of this defendant, or any part thereof, to surrender the same to such receiver, or to hold such property under such receiver.

GEORGE O. HILZINGER, Solicitor for Defendant. (2)

[Endorsed]: In Equity—No. E-70 (Tucson). In the District Court of the United States, in and for the District of Arizona. The Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. The Tucson Rapid Transit Company, a Corporation, Defendant. Answer. Filed Feb. 20, 1919. Mose Drachman, Clerk. By Effie D. Botts, Chief Deputy Clerk. Geo. O. Hilzinger, Solicitor for Defendant. [7]

In the District Court of the United States, in and for the District of Arizona.

THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

THE TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Order Appointing Receiver.

And now this cause coming on to be heard, upon the application of the plaintiff for the appointment of a Receiver, plaintiff appearing by Kingan & Campbell, its attorneys, and the defendant, the Tucson Rapid Transit Company, appearing by its attorney, ————————, and all parties consenting thereto,——

IT IS ORDERED AND ADJUDGED, That Edwin F. Jones, be and he is hereby appointed Receiver of all of the property and assets of every kind and description of the said defendant, the Tucson Rapid Transit Company, with full authority to take possession thereof, and receive, operate, manage and control the same. Said Receiver is hereby empowered and instructed to take possession of all of the said property of the Tucson Rapid Transit Company, and to manage, control and operate the street railway of said defendant company,

and to take in his possession as aforesaid all property of said company, of every kind and character, and to preserve and protect all of said property, and to collect as far as possible all assets choses in action and credits due to said company, acting in all things under the orders of this Court. The said Receiver shall also have authority subject to the supervision of the Court, to make such repairs to said railway and property as are necessary in his judgment for the carrying on of the business thereof, and also to make all contracts that may be necessary in carrying on the business of said railroad, subject to the supervision of this Court; (1)

IT IS FURTHER ORDERED, That the said Receiver, out of the money which shall come into his hands by the operation of said railroad or otherwise proceed to make payments as follows: He will pay all current expenses incident to the operation of said railroad and the administration of his trust; he shall pay all amounts now legally [8] due or that shall hereafter become due for taxes on any of the property over which he is appointed Receiver, and any other or further funds which may come into his hands he shall hold subject to the supervision of this Court;

IT IS FURTHER ORDERED, That any and all persons in possession of the property of the said defendant or any part thereof shall at once surrender the same to such Receiver or shall hold said property under such Receiver; and that said de-

fendant are hereby restrained and enjoined from interfering with said Receiver, in the possession and operation of said property.

IT IS FURTHER ORDERED, That the said Edwin F. Jones give bond in the penal sum of Ten Thousand and no/100 Dollars (\$10,000.00) with sureties to be approved by the clerk of this court, conditioned for the faithful performance of his duties as such Receiver.

Dated, this 21st day of February, 1919.

WM. H. SAWTELLE,

Judge. (2)

[Endorsed]: In the District Court of the United States in and for the District of Arizona. The Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant. Order Appointing Receiver. Filed February 21, 1919. Mose Drachman, Clerk. By Effie D. Botts, Chief Deputy Clerk. [9]

In the District Court of the United States for the District of Arizona.

THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,

Plaintiff,

VS.

THE TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

1,199.99

Report of Receiver.

To the Honorable WILLIAM H. SAWTELLE, Judge:

The undersigned heretofore appointed by order of the Court as Receiver of the property and assets of the defendant, The Tucson Rapid Transit Company, respectfully reports.

That immediately upon being appointed he qualified and took possession of the property of the Company.

There is outstanding capitol stock, all com-
mon of\$500,000
There are also first mortgage bonds dated
3, 15, 16 (March 15, 1916), to the
amount of
There are demand notes due the Tucson
Gas Electric Light and Power Com-
pany 60,000
Making a total of Capitol Account liabili-
——————————————————————————————————————
ties\$674,000
——————————————————————————————————————
ties\$674,000 There are open accounts due by the Company as follows:
ties
ties\$674,000 There are open accounts due by the Company as follows:

Electric Light and Power Company.

Accounts payable	588.68
Open account	4,980.28
	· · · · · · · · · · · · · · · · · · ·
Making a total of current liabilities\$	85,310.43
There is also a tax liability which will	
have to be met in May of \$	1,212.28
And other unadjusted claims against	
the Company	1,964.13

Making a total liability of.............\$764,938.74

To this must be added the judgment and costs in the case of Asma Rubais vs. Tucson Rapid Transit Company, which is now pending on appeal in the Supreme Court of the State.

The property consists of about 4.35 miles of single track lying within the corporate limits of the city of Tucson, and may roughly said to be divided into two lines.

- 1. The line from the corner of Congress Street and Stone Avenue to the University of Arizona.
- 2. The lines on the south side of the Southern Pacific Railroad, consisting of the line down Congress Street and the Fourth [10] (2) Avenue line running south from the Subway to 17th Street and rejoining the Congress Street line at the foot of Main Street, and the line south on Stone Avenue to 17th Street.

The first line from the intersection of Stone Avenue and Congress Street is paved to the crossing of the Southern Pacific Railroad Company and this

part of the line is comparatively permanent, in good repair and will require but small maintenance expense. North of the Southern Pacific Crossing on Stone Avenue and Third Street the line is in a dirt street which will always require constant care and repair, it being impossible in the nature of things to escape a constant charge for maintainance on this part of the line.

Of the track on the south side of the Southern Pacific, other than the University line, that on Stone Avenue South of Congress is paved and repairs will be small on that line; also the track on Congress Street is paved and maintenance charges will be small. The rest of the track consisting of the lines on Fourth Avenue, Seventeenth Street and Main Street are in dirt streets and will require considerable maintenance expense.

The company is confronted by the fact that the business district lies wholly on the southern side of the Southern Pacific Railroad, while the much larger part of the residence district, from which the travel must be had, lies on the northern side. There is but one crossing of the Southern Pacific by the company, that on Stone Avenue where the line crosses five tracks of the Southern Pacific Company. The crossing is both destructive of the ability of the company to maintain its schedule on the University line, caused by the inevitable delay occasioned by the passage across it at slow speed of the numerour freight trains on the line, it being

situated near the foot of a long grade entering the town from the west, and requiring the help of another engine to take trains to the vards, and we having crossed the railroad line, are bound to maintain the crossings, as well as keep a man there seventeen hours a day to attend to the safety switches. The total cost of maintenance and the pay of (3) the watheman there exhaust a sum equal to fair [11] interest on \$30,000.00. Again, this being the only crossing, it has resulted in a situation which has been judged by the owners to forbid any extension into the territory lying between the railroad on the south and Third Streer or University Avenue, as it is sometimes called, on the north, and extending from Stone Avenue on the west to the property of the University on the east. In this area most of the home building done in Tucson for the last three years has been done, and I think it is within limits to say that sixty-five per cent of the building of the moderate priced dwellings (\$2,500.00 to \$5,000.00) has been done there. is inhabited by a self-sustaining population in moderate circumstances and certainly furnishes the most promising territory for an increase of business of the company. If a loop could be run from the present terminus at the University south for four or five blocks and then secure a crossing of the Southern Pacific at or near the Subway it would be an ideal extension, and would, in the opinion of the writer, double if it did not treble the income of

that part of the line. And if this crossing could be secured either over or under the track of the railroad and thus avoid the delay, danger and expense of a grade crossing the system would soon be on its legs financially and the community would secure what it has never had, prompt, safe and pleasant means of travel between the residence and business portions of the city. This extension would also do what the system now fails to do, in that it would furnish transportation to the High School which draws its pupils from all parts of the city, and should furnish a steady source of business. If the objections to the use of the subway as a means of crossing the railroad will prevent its use for that purpose, and it be considered impracticable to secure a crossing at or near that point, by other means, then it is suggested that an extension of the line from the present terminus at the University south for four blocks and thence a line running west along Sixth Street and by the High School to a junction with the present Stone Avenue line on either Fifty or Sixth Streets, would at least double the receipts of the line. This solution of the problem of meeting the transportation needs of the people between the residence and business portions of the town, would still leave [12] such travel subject to the delays and dangers of the grade crossing at Stone Avenue and would still leave the company unable to maintain its schedule and subject to the

(4) expensive maintenance of the crossing. The writer believes that it would pay the company if some arrangement could be made by which the company and the railroad should be enabled to dispense with this obstacle in the way of a successful system and the city could afford, as it did in the case of the present subway, to contribute a material part of the expense of securing this much needed crossing. The results which followed the opening of the present subway in all the district affected by it amply shows the good judgement which dictated its construction, and is alike instructive and encouraging.

The rolling-stock of the company is antiquated in part, some of the cars having been in service when the writer came to Tucson in February, 1906, and the later additions in the shape of the one-man cars added a year or two ago being unsatisfactory and uncomfortable. It has been maintained as well as the revenues of the company would permit and has still a very substantial value.

Some year or more ago the company, vexed by the competition between the University and the business portion of the town attempted to solve the

problem by the purchase of the	
busses used, and made an investment	
in them of	0
	-
Thus making a total investment in roll-	
ing stock of\$28,160.2	21
The operation of the busses were a failure an	d
they are practically worthless for any compan	y
purpose.	
The company employs regularly 14 men and three	ee
others have been temporarily employed. The me	en
have been careful in the operation of the syste	m
and no complaint has come to the attention of the	ıе
Receiver as to the conduct or bearing of any en	n-
ployee of the company.	
The operation of the company for the month of	\mathbf{f}
March show scarcely any margin between the ir	1-
come and the expenses of the company, and unfor	r-
tunately in the opinion of the Receiver there is [13	:]
small hope of any substantial increase in receipt	ts
with the present mileage, and absolutely no hope	of
any substantial decrease in the expenses (5).	
For the month of March there has been a	
gross income of\$2,735.7	71
As against the income for the same month	

Showing an increase of\$ 216.83

The operating expenses for March, 1919,	
are\$	2,688.29
For March, 1918, they were	2,116.29

Showing an increase of.....\$ 572.00

The following history of the condition of the company for the last year is perhaps pertinent to the consideration of these figures.

Some time ago the company secured from the Corporation Commission of the State of Arizona the right to raise the fares from a straight five cent fare to eight cents for a single fare and some small reduction of that rate where more than a single ticket was purchased and the effects of this order are beginning to be felt and its probable result on the earnings of the company can soon be determined with a fair degree of accuracy.

It has manifestly caused a small increase in the passenger revenue of the company, but this is at the expense of the number of passengers carried, the company having carried 13,319 less passengers in the month of March this year and the corresponding period last year. It still remains to be seen whether the public will ride at the eight cent fare.

The increase in the operating expenses was caused by the increased wages paid the employees and in view of present conditions.

The capital of the company seems excessive, and it is certain that its physical replacement could be had for a much less sum, but it is also indisputable

that the system has been a losing venture under the circumstances surrounding it, and that the persons who have put their money into it have not received a fair return. It is unquestionably true that financing the construction of street-car lines in cities the size of Tucson, is largely a work of faith, and that generally the estimates of future earning of the company and the growth of the population to be served are painted in the rosey colors of hope, rather than in the soberer [14] tones of the things that really happen. Certain it is that the prospects which ten years ago seemed to lie in the path of the company and the city had many setbacks and hinderances for which the company was in no wise responsible. The panic of 1907 and 1908, and the long-continued disturba in Mexico which very injuriously affected the growth of the (6) city had a like effect on the revenues of the company, and the fact that its income has not sufficed to pay the interest on its bonds to say nothing of any dividends to its stockholders is eloquent of the difficulties it has met.

While these things are true, it is likewise true that the citizens of Tucson are entitled to a reasonably efficient service, and it must be true that the owners of the system must furnish such reasonably adequate facilities as demanded by the conditions now existing and must therefore make such further extensions as the situation warrants viewed in the light of things as they now exist. It may not be

called on to make extensions or improvements which would not at the present time yield a fair revenue, but surely where the field shows the business needs of extensions, with fair revenue, the company should, if possible, make them, and the public have the right to insist that this be done.

While it is clearly true that a court will not compel a private business to incur further expense or to take further risks by the extension of its operations, but will simply hold its assets for the benefit of the persons found entitled to them, it may well be argued that where a public franchise is involved, and the corporation owes quasi-public duties, or uses public streets or other property under its franchise that in a proper case the right of the public to service might be paramount to private profit and a court would compel a reasonable exercise of the franchise whether presently frofitable or not.

The company has no power plant of its own, but purchases its power from the Tucson Gas, Electric Light and Power Company at rates fixed by the corporation Commission of the State of Arizona. The fair cost of power is such a complex thing, and the writer not having the data to determine whether the rate allowed by the Commission is fair under the existing circumstances does not feel [15] warranted at this time in saying that the cost is excessive, but the matter is receiving his careful attention, and if the facts warrant such action the

matter will be brought to the attention of the Court.

Respectfully submitted,

EDWIN F. JONES,

Receiver.

[Endorsed]: In the District Court of the United States for the District of Arizona. The Tucson Gas, Electric Light and Power Co., a Corporation, Plaintiff, vs. The Tucson Rapid Transit Company, a Corporation, Defendant. Report of Receiver. Filed April 26, 1919. Mose Drachman, Clerk. By Effie D. Botts, Chief Deputy Clerk. [16]

In the District Court of the United States for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY,

Defendants.

Report of Receiver.

To the Honorable WILLIAM H. SAWTELLE.

The undersigned herewith files his second report as Receiver in the above-entitled cause, showing operations of the property of the defendant corporation up to June 1st, 1919.

The business has materially increased during the

month of May, the total receipts being \$3,211.99 against \$2,467.68 for May, 1918, an increase of 30.2%. The business for the five months (January 1st to June 1st), 1919, amounts to \$13,727.85, while for a similar period in 1918 the receipts amounted to \$11,949.31, an increase of 14.9%.

The operating expense for the month was \$2,130.44, compared with \$1,865.86 for May, 1918, an increase of 14.2%.

The net earnings for May, 1919, are \$1,081.55 against \$601.82 for May, 1918, a gain of 79.8%.

The cost of power for the month of May, 1919, was \$419.11 against \$463.69 for the same month of 1918, a saving of \$44.58.

The operations for the month include the carrying of 42,279 revenue passengers, 932 transfers and 1,110 employees and complimentary, making a total of 44,323 passengers.

The cars of the company have run 12,610 car miles during the month, and have produced a revenue of \$25.47 cents per car mile.

The number of passengers is still below the number carried in May, 1918, before the increased fare went into operation; the records for May, 1918, showing the number of passengers for that month to be 50,776, or 6,453 more than this year, but [17] the difference seems to be steadily diminishing and the public is apparently becoming reconciled to the conditions which compelled the increased rate of fare. It is believed by the undersigned that within

a short time the company will receive the patronage which should come to it and it is hoped that the increased patronage will justify the improvements which were suggested in a former report.

The Receiver feels compelled to again call the attention of the Court and parties to the situation caused by the Stone Avenue crossing. It still remains a source of expense delay and inconvenience, which materially diminishes the revenue of the company and renders it impossible to maintain a schedule so as to develop the patronage which should come to the company. Its maintenance requires an outlay equal to interest on \$40,000.00 and its situation, where it is subject to the delays caused by the passage of long freight trains at slow speed, and the constant switching across it required by the necessities of the freight station of the Southern Pacific which lies immediately west of it renders it an increasing *ime*diment to the operations of the cars and imperatively demands that it be done away with if possible. It is also productive of exhaustive repairs to the cars, caused by the passage over the five frogs. The writer is convinced that this crossing caused more wear and tear to the cars, (2) , especially the motors, than all other service required of them.

Continued observation shows the necessity to make extensions into the territory south of University Avenue and north of the Southern Pacific tracks. Such extensions are necessary to reach the month of May, the total receipts being \$3,211.99 against \$2,467.68 for May, 1918, an increase of 30.2%. The business for the five months (January 1st to June 1st), 1919, amounts to \$13,727.85, while for a similar period in 1918 the receipts amounted to \$11,949.31, an increase of 14.9%.

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a short time the company will receive the patronage which should come to it and it is hoped that the increased patronage will justify the improvements which were suggested in a former report.

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Continued observation shows the necessity to make extensions into the territory south of University Avenue and north of the Southern Pacific tracks. Such extensions are necessary to reach the mass of the population on which the company must depend for patronage, and would afford an opportunity to serve the High School and thus cultivate a field which seems full of promise. If these extensions could be made and a crossing of the Southern Pacific could be secured free from the dangers and unvexed by the deayls which are inherent in the present crossing, the company would have a most desirable piece of property and one which would adequately serve the public at a fair profit to its owners. [18]

The Receiver desires to acknowledge the cordial co-operation given him by the entire force connected with the operation of the cars.

Respectfully submitted,

EDWIN F. JONES,

Receiver.

Dated at Tucson, Arizona, June 23, 1919.

[Endorsed]:E—70, Tucson. In the District Court of the United States for the District of Arizona. Tucson Gas, Electric Light and Power Company, Plaintiff, vs. Tucson Rapid Transit Company, Defendant. Edwin F. Jones, Receiver. Filed June 23, 1919. Mose Drachman, Clerk. By Effie D. Botts, Chief Deputy Clerk. [19]

In the District Court of the United States in and for the District of Arizona.

THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,

Plaintiff,

VS.

THE TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Notice of Motion of Asma Rubaiz Call Up for Hearing Petition for Intervention.

To the Above-named Plaintiff and Its Attorneys, the Above-named Defendant and Its Attorney, and to EDWIN F. JONES, Receiver:

You will please take notice that on Monday, April 5th, 1920, at 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, Asma Rubaiz will call up for hearing before the above-entitled court, in the above-entitled cause, at the courtroom of the above-entitled court, in the City of Tucson, County of Pima, State of Arizona, her intervening petition to recover a judgment of a State Court, a copy of which said petition is hereto annexed.

ASMA RUBAIZ.

By MOORE & FRAWLEY,

RICHEY & RICHEY,

Her Attorneys. [20]

In the District Court of the United States in and for the District of Arizona.

No. E.—70.

THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,

Plaintiff.

VS.

THE TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

Intervening Petition of Asma Rubaiz to Recover a Judgment at State Court.

To the Honorable District Court of the United States, in and for the District of Arizona.

Your petitioner, Asma Rubaiz, who resides in St. Mary's Hospital, near the City of Tucson, in the County of Pima, State of Arizona, praying for leave to intervene in the above-styled and numbered cause, and for other orders, respectfully represents to the Honorable Court:

That on, to wit, the 10th day of January, 1918, and prior to the order of this Honorable Court placing the property of the said, The Tucson Rapid Transit Company, a corporation, into the control and possession of the Receiver, Edwin F. Jones, the intervenor herein, said Asma Rubaiz, instituted suit in the Superior Court of the State of Arizona, in

and for the County of Pima, on a claim for damages for personal injuries negligently inflicted on your petitioner by said The Tucson Rapid Transit Company, a corporation.

That thereafter and on the 25th day of June, 1918, and prior to the appointment of said Receiver, your petitioner recovered judgment against said The Tucson Rapid Transit Company, a corporation, (1) in said Superior Court for the sum of \$4,500.00 and \$52.75 costs of suit.

That hereto attached, marked Exhibit "A" and made a part hereof, is a full, true and correct copy of said judgment, duly certified by the Clerk of said Superior Court above mentioned.

That thereafter said The Tucson Rapid Transit Company, a corporation, and said Receiver appealed from said judgment to the Supreme Court of the State of Arizona, and on, to wit, the [21] 2d day of February, 1920, said Supreme Court rendered its judgment affirming the said judgment of said Superior Court, and thereafter and on, to wit, the 18th day of February, 1920, said Supreme Court issued its mandate and forwarded same to said Superior Court, a true and correct copy of said mandate, duly certified by the Clerk of said Superior Court being hereto attached, marked Exhibit "B" and made a part hereof.

That no part or portion of said judgment has been paid and same remains wholly unsatisfied, and by reason of Section 3634 of the Civil Code of the Revised Statutes of the State of Arizona, 1913, said judgment is a first lien on the personal property of said The Tucson Rapid Transit Company, a corporation, and such lien is entitled to be foreclosed and the amount due on said judgment should be paid by said Receiver prior to any other claim mentioned and described in the bill, petition or complaint of plaintiff above named.

That your petitioner, Asma Rubaiz, is informed and believes and upon such information and belief alleges that the said Receiver, Edwin F. Jones, now has on hand as current receipts as the result of managing and operating the properties of said The Tucson Rapid Transit Company, the sum of approximately \$7,000.00, and that same or any part thereof is not essential or necessary for the operation or management expenses of the property of said the Tucson Rapid Transit Company. (2)

That your intervenor, through her attorneys, has demanded payment of said judgment and the payment has been refused, and that there is now due and unpaid on said judgment the sum of \$4,552.75, with interest thereon from the 25th day of June, 1918, at the rate of 6% per annum, and the further sum of \$106.00, costs in the said Supreme Court, together with interest thereon from the 2d day of February, 1920, at the rate of 6% per annum.

And this intervenor says said judgment is a first and prior lien on the personal property of said The Tucson Rapid Transit Company, a corporation, within the County of Pima, State of Arizona, including said sum of money in the hands of said receiver, and prays an order of the Honorable Court conferring the same as such first [22] and prior lien and for the further order for the immediate payment thereof by said Receiver.

And the intervenor prays for such further or other orders respecting said claim as may seem to the Honorable Court equitable, proper, and necessary under the fact, and so as in duty bound will ever pray.

MOORE & FRAWLEY, RICHEY & RICHEY,

Attorneys for Intervenor, Asma Rubaiz.

State of Arizona, County of Pima,—ss.

Asma Rubaiz, being first duly sworn, on her oath says: That she is the petitioner in intervention above named; that she has read the foregoing petition in intervention and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters stated on information and belief, and as to those matters she believes it to be true.

ASMA RUBAIZ.

Subscribed and sworn to before me this 1st day of April, 1920.

[Seal]

A. T. SMITH,

Notary Public.

My commission expires May 12, 1920. [23]

Exhibit "A."

In the Superior Court, County of Pima, State of Arizona.

ASMA RUBAIZ,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Judgment.

This cause came on regularly for trial in the above-entitled court on the 24th day of June, 1918, and thereafter and on the 25th day of June, 1918, continued, the plaintiff, Asma Rubaiz, appearing in person and by her attorneys, Messrs. Richey & Richey, E. B. Frawley and Kirk T. Moore, and the defendant, Tucson Rapid Transit Company, a corporation, appearing by its attorney, S. L. Kingan, a jury of twelve persons was regularly and duly impaneled and sworn to try said action. Witnesses on the part of plaintiff were duly sworn, examined and cross-examined, and other evidence introduced, and at the request of attorney for the defendant the Court submitted to the jury to be by them answered, two several special interrogatories, to wit:

Did the plaintiff in this case alight or attempt to alight from the street-car before it had stopped at all and while it was still moving? If you answer the above question in the affirmative then did the act of the plaintiff in getting off or attempting to get off said car while it was in motion, proximately contribute to the injury?

After hearing and receiving the evidence, the instructions of the Court, the said interrogatories, and the arguments of the attorneys for plaintiff and defendant, the jury retired to consider said interrogatories and their verdict, and subsequently returned into court, and being called, answered to their names, and say they answer said interrogatories and find a verdict for the plaintiff as follows, to wit:

Did the plaintiff in this case alight or attempt to alight from the street-car before it had stopped at all and while it was still moving?

Answer: No.

JULIAN JOHNSON,

Foreman.

If you answer the above question in the affirmative, then did the act of the plaintiff in getting off or [24] attempting to get off said car while it was in motion, proximately contribute to the injury?

Answer: —

In the Superior Court of Pima County, State of Arizona.

No. 6334.

ASMA RUBAIZ,

Plaintiff.

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

We, the Jury duly impanelled and sworn in the above-entitled cause, upon our oaths do find for the plaintiff, and fix the amount of her recovery in the sum of Forty-five Hundred & no/100 (\$4500.00) Dollars.

JULIAN JOHNSON,

Foreman.

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that the plaintiff, Asma Rubaiz, do have and recover of and from the defendant, Tucson Rapid Transit Company, a corporation, the sum of Forty-five Hundred Dollars (\$4500.00), together with said plaintiff's costs in said action amounting to the sum of \$52.75.

Done in open court this 25th day of June, 1918. SAMUEL L. PATTEE, Judge. [Endorsed]: 6334. In the Superior Court, County of Pima, State of Arizona. Asma Rubaiz, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant. Judgment. Filed July 2, 1918, at 4:30 P. M. S. A. Elrod, Clerk.

State of Arizona, County of Pima,—ss.

I, Olive G. Failor, Clerk of the Superior Court of Pima County, State of Arizona, do hereby certify that I have compared the within and foregoing copy of judgment in the case of Asma Rubaiz, plaintiff, vs. Tucson Rapid Transit Company, a corporation, defendant, No. 6334, with the original record of the same remaining in this office, and that the same is a true and correct transcript therefrom.

WITNESS my hand and seal of said court affixed this first day of April, A. D. 1920.

[Seal]

OLIVE G. FAILOR,

Clerk.

By M. S. Brown, Deputy Clerk. [25]

Exhibit "B"-Mandate.

In the Supreme Court of the State of Arizona.

To the Honorable the Superior Court of the State of Arizona, in and for the County of Pima, GREETING:

WHEREAS, lately in the Superior Court of the State of Arizona in and for the County of Pima, before you in a cause between Asma Rubaiz, plain-

tiff, and Tucson Rapid Transit Company, a corporation defendant, No. 6334; wherein the judgment of the said Superior Court, made and entered in said cause on the 25th day of June, 1918, is in the following words, viz.:

". . . WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that the plaintiff, Asma Rubaiz, do have and recover of and from the defendant, Tucson Rapid Transit Company, a corporation, the sum of Forty-five Hundred Dollars (\$4500.00), together with said plaintiff's costs in said action, amounting to the sum of \$52.75.

Done in open court this 25th day of June, 1918.

SAMUEL L. PATTEE,

Judge."

as by the inspection of the record of the said Superior Court, which was brought into the Supreme Court of the State of Arizona by virtue of an appeal by the defendant, Tucson Rapid Transit Company, agreeably to the law in such case made and provided fully and at large appears.

AND WHEREAS, in October, in the year of our Lord one thousand nine hundred and nineteen, the said cause came on to be heard before the said Supreme Court and was submitted after argument by counsel.

ON CONSIDERATION WHEREOF, it was on the second day of February in the year of our Lord one thousand nine hundred and twenty, ordered by this court that the judgment of the said Superior Court in this cause, be, and the same is hereby affirmed.

AND DECREED that Asma Rubaiz, appellee herein, do have and recover of and from the Tucson Rapid Transit Company, a corporation, appellant herein, as principal, and E. E. Russell and Alexander Rossi, sureties on cost bond on appeal herein, the principal sum of Forty-five Hundred (\$4500.00) Dollars, with interest thereon at the rate of six per cent per annum from the 25th day of June, 1918, until paid; together with her costs in the [26] lower court in this cause incurred, taxed and allowed at the sum of Fifty-two and 75/100 (\$52.75) Dollars, and her cots in this court, taxed at the sum of One Hundred and Six (\$106.00) Dollars.

You therefore are hereby commanded that such proceedings be had in said cause, as according to right and justice, and to law, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable D. L. CUNNING-HAM, Chief Justice of the Supreme Court of the State of Arizona, the eighteenth day of February, in the year of our Lord one thousand nine hundred and twenty.

C. F. LEONARD,

Clerk of the Supreme Court of the State of Arizona.

COSTS OF APPELLEE.

Clerk	\$15.00	
Reporter's transcript	27.00	
Transcript of record		
Abstract of record		
Brief	64.00	
\$106.00		

[Endorsements]: 6334. No. 1741. Supreme Court of the State of Arizona. Tucson Rapid Transit Company, a Corporation, Appellant, vs. Asma Rubaiz, Appellee. Mandate. Filed Feb. 20, 1920. O. G. Failor, Clerk. By L. V. Clawson, Deputy.

State of Arizona, County of Pima,—ss.

I, Olive G. Failor, Clerk of the Superior Court of the State of Arizona, in and for the County of Pima, do hereby certify that I have compared the foregoing copy of Mandate of the Supreme Court of the State of Arizona, in the case of Tucson Rapid Transit Company, a Corporation, Appellant, vs. Asma Rubaiz, Appellee, No. 1741, with the original records of the same remaining in this office, and that the same are true and correct transcripts therefrom.

WITNESS my hand and seal of said court affixed this 1st day of April, 1920.

[Seal]

O. G. FAILOR,

Clerk.

Leslie L. Hubbard,
Deputy.

[Endorsement]: In the District Court of the United States, in and for the District of Arizona. The Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. The Tucson Rapid Transit Company, a Corporation, Defendant. No. E.—70. Intervening Petition to Recover a Judgment of a State Court. Copy of within acknowledged this 1st day of April, 1920. Kingan & Campbell, Attorneys for Plaintiff. Geo. O. Hilzinger, Attorney for Defendant. Edwin F. Jones, Receiver. Filed Apr. 1, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. [27]

In the District Court of the United States, in and for the District of Arizona.

E.—70.

TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,
Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Report of Receiver.

The undersigned, receiver appointed in this cause, begs leave to report the result of the year's operations of the property under his receivership.

There is on hand in cash, deposited to the credit of the receiver, in the Arizona National Bank of Tucson, the sum of \$8,368.77, which sum is the result of the year's operations, after the payment of the absolute costs and expenses of conducting the business of the company. At the time the undersigned was appointed receiver, there was only a small balance of about \$100.00 turned over to him.

The Receiver calls the attention of the Court to the increased gross revenue for the month of March over that of the corresponding month of last year, the figures being \$3,560.15 for March, 1920, and \$2,735.71 for March, 1919, being an increase of \$824.44, of 30.1 per cent. For the same period the operating expenses were \$2,784.02 in March, 1920, against \$2,688.29, an increase of \$95.73, or 3.6 per cent.

Since the first day of October, the public has seemed more inclined to ride at the increased fare, which was raised just prior to the appointing of the Receiver, from five to eight cents. Prior to that time the increased price of passage was almost equalled by the decrease in passenegers carried, and the Receiver believes that the company will earn a small surplus each month of approximately \$500

to \$750, excepting during the months of June, July and August, during which months the University of Arizona is not in session, and the patronage is consequently much reduced. The Receiver hopes, during these months, to have the operating revenue equal the expenses. [28] During the month of March, 1920, the total number of revenue passengers carried by the company has been 46,684 against 36,042 for the month of March, 1919. The number of car miles operated is practically the same, being 12,642 in March, 1920, and 12,657 in March, 1919. The amount paid for power during the month of March, 1920, is \$492.72 as against \$507.96 for the corresponding month of last year, being a decrease of \$15.24 for that item.

The Receiver again calls the attention of the Court to the fact that the operations of the company are greatly hindered, and its power to maintain its schedule destroyed by the physical conditions which exist at the Stone Avenue crossing. As before pointed out, this crossing is at the foot of the grade coming into Tucson from the west, and the long freight trains of the Southern Pacific are stopped just west of this point and a helper engine is attached, and these long trains are pulled slowly up the grade at a rate not exceeding four or five miles an hour frequently resulting in the complete stoppage of the cars from fifteen to twenty minutes. The schedule of the cars from

Stone Avenue to the University being only twenty minutes apart, it is manifest that such delays are absolutely destructive to the ability of the company to maintain its schedule, and consequently the Receiver has been unable to build up the service based upon prompt and regular transportation. (2)

The attention of the owners has been frequently called to this state of facts, but no remedy has been suggested to the undersigned, and he has no means within his power to remove or alleviate the situation which is thus created.

The Receiver believes that if a crossing could be secured which is free from the delays and relieved of the dangers which infest this crossing, that a considerable increase of patronage could be secured, even with the present plant of the company, and if sufficient money were invested in the property to afford it a line from the University in the direction of the Country Club, and either through the subway at the head [29] of Congress Street or back to the junction of the line just north of the Stone Avenue crossing, the receipts could be doubled with an increase in operating expenses not to exceed 25 per cent. These matters have also been called to the attention of the owners of the property, but so far the Receiver has been unable to secure any alleviation of these conditions.

The City of Tucson has already passed an ordinance to pave Stone Avenue North from the crossing to the Southern Pacific Railroad to and beyond

Third Street, or University Avenue, and this will compel the paving of the north four blocks by the street-car company in order to maintain its franchise, the franchise specifically providing that it may be declared *forfeit* upon the failure of the company to pave at any time when required by the City Council. The contract has already been let for the paving of Stone Avenue over the above distance.

The amount of money in the hands of the Receiver will about be sufficient to make this paving, if the Court should authorize its expenditure for that purpose, but the Receiver has been notified of the filing of a petition by Asma Rubiaz to have her judgment, which now amounts to about \$5,000, paid out of the funds now in the hands of the Receiver, and there (3) will be due in May, \$674.00 of taxes due the State of Arizona and County of Pima, which will have to be paid. He is also informed that the trustee of the bondholder will intervene and seek to have said money applied to the interest on their mortgage, or to the use and protection of the property covered by said mortgage, the said trustee claiming that the entire property of the company is covered by its mortgage, and that outside of the actual expenses of operation, the money in the hands of the Receiver should be applied to the payment of their interest pro tanto, and that the same be applied to the paving of said road, as above set out, in order that this

franchise may be preserved, and the value of its security be improved.

If the Court should be of the opinion that the money in the hands of the Receiver cannot be used for the purpose of paying the paving already ordered by the City of Tucson, and [30] thus preserve the franchise of the company, the Receiver respectfully requests that he be instructed as to his duty in the premises.

The receiver is of the opinion that the company cannot hope for any greatly increased revenue with its present plant, hampered by the present Stone Avenue crossing, and therefore submits the facts to the Court for its information, with the request for such orders and decrees as the Court may deem just and proper.

Respectfully submitted, EDWIN F. JONES, Receiver. (4)

[Endorsed]: In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant. Report of Receiver. E.—70. Filed Apr. 23, 1920. C. R. Mc-Fall, Clerk. [31]

In the United States District Court, in and for the District of Arizona.

E.—70.

TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation, Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

and

ASMA RUBIAZ,

Intervenor.

- Notice of Motion of The International Trust Company to Call Up for Hearing Petition for Intervention.
- To the Above-named Plaintiff and the Above-Named Defendant and Its Receiver, Edwin F. Jones, and Asma Rubiaz and Her Attorneys, Intervenor:

YOU WILL PLEASE TAKE NOTICE, that on the 29th day of Apr. 1920, at ten o'clock in the forenoon of said date, or as soon thereafter as counsel may be heard, *The International Trust Company* will present for hearing before the above-entitled court in the above-entitled cause, and at the courtroom of the above-entitled court, in the city of Tucson, Arizona, its motion and petition to be per-

mitted to intervene in the above-entitled action. A copy of the petition for intervention and of the proposed complaint in intervention of the intervenor is attached hereto.

KINGAN & CAMPBELL,

Attorneys for International Trust Company.

[Endorsed]: No. E.—70. In the United States District Court, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz, Intervenor. Notice of Motion. Service admitted this 26th April, 1920. Richey & Richey, Moore & Frawley, both Attys. for Asma Rubiaz, Intervenor. Edwin F. Jones, Receiver. Filed Apr. 26, 1920. C. R. McFall, Clerk. [32]

In the United States District Court, in and for the District of Arizona.

E.—70.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ,

Intervenor.

Petition for Intervention.

To the Honorable WILLIAM H. SAWTELLE, Judge of Said Court:

Comes now THE INTERNATIONAL TRUST COMPANY, a Corporation, under the laws of the State of Colorado, and having its principal place of business in the city of Denver, said state, and respectfully petitions this Court for permission to intervene in the above-entitled cause, and your petitioner presents herewith and attached hereto and by reference made a part hereof its complaint in intervention and prays this Honorable Court to consider all of the matters and things set forth in said complaint in intervention to be read as and deemed a part of this petition to intervene.

Your petitioner respectfully represents that by reason of the matters and things set forth in said complaint it should and by right ought to be permitted to intervene and become a party in the above-entitled cause.

WHEREFORE, your petitioner prays for an order of this Honorable Court permitting it to file its said complaint in intervention and to be made a party in the above-entitled cause.

KINGAN & CAMPBELL, Attorneys for Petitioner. [33]

[Endorsed]: No. —. In the United States District Court, in and for the District of Arizona.

Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz, Intervenor. Petition to Intervene. Filed Apr. 26, 1920. C. R. McFall, Clerk. [34]

In the United States District Court, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,
Intervenors.

Complaint in Intervention.

To the Honorable WILLIAM H. SAWTELLE, Judge of the Aforesaid Court:

Comes now The International Trust Company, and respectfully shows to the Court:

I.

That it is a corporation duly incorporated and existing under and by virtue of the laws of the State of Colorado, and having its principal place of business at the city of Denver, said state: that the Tucson Rapid Transit Company is a corporation under the laws of Arizona, and having its principal place of business at the city of Tucson, in said state; that The Tucson Gas, Electric Light & Power Company, is a corporation duly organized under and by virtue of the laws of Colorado, and with its principal place of business in the city of Tucson, Arizona; that the intervenor, Asma Rubiaz is, as your petitioner and complainant is advised, a resident of said city of Tucson. (1)

TT.

That your petitioner and complainant is, among other things, authorized and empowered by its articles of incorporation to act as trustee and to take, have and accept trusts, especially those of the character hereinafter described.

III.

That heretofore and on the 15th day of March, 1906, [35] the said Tucson Rapid Transit Company caused to be duly executed and delivered to your complainant a certain indenture of trust, wherein and whereby the said Tucson Rapid Transit Company did convey and transfer to your said petitioner all of its property and rights which it then had or might thereafter acquire, and which said indenture of trust, so duly executed, delivered and accepted by your complainant, is in the words and figures as follows, to wit:

This indenture made this 15th day of March,

A. D. 1906, by and between The Tucson Rapid Transit Company, a corporation, duly organized and existing under and by virtue of the laws of the Territory of Arizona (hereinafter referred to as the Transit Company), the party of the first part, and The International Trust Company, a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, having its principal place of business in Denver, Colorado (and hereinafter referred to as the Trustee), party of the second part,

Witnesseth: Whereas said Transit Company, in accordance with the laws of the Territory of Arizona, and by virtue of the provisions of the articles of incorporation thereof, has full power and authority to issue and sell the bonds and to secure the payment thereof by mortgage upon all or any part of the property of said company; and

Whereas, by virtue of the provisions of the said articles of incorporation of said company, the board of directors thereof is expressly authorized and empowered to issue and cause to be executed the bonds and debentures of said company and to authorize and direct the execution of mortgages or other security upon and with heference to the real and personal property of said company for the purpose of securing the payment of such bonds and debentures; and

Whereas, the Transit Company procured and holds a franchise from the City of Tucson in the

Territory of Arizona, extending over a period of twenty-five years, to construct and operate a line or lines of street railway in said city, by electricity or mechanical power, and has purchased, taken over and acquired the real and personal property, plant and equipment (2) [36] of the Tucson Street Railway, a corporation formerly engaged in operating a street railway system in the said City of Tucson, and intends to convert the said railway system into an electric system, and to enlarge and extend the same; and

Whereas, in order to the purchase and acquisition of said property, and to carry out the purposes for which the Transit Company was organized, it is necessary and proper for said company to issue and sell its bonds, secured by mortgage or deed of trust upon all its property and assets; and

Whereas, at a meeting of the stockholders of said Transit Company, duly called and held in the City of Tucson, Arizona, at which meeting more than two-thirds of the entire capital stock of said company was represented and voting the following resolution having been offered, was duly adopted, more than two-thirds of the entire capital stock of the company being voted in favor thereof, to wit:

"Whereas, the Tucson Rapid Transit Company has purchased all the property, plant and equipment of the Tucson Street Railway with the intention of converting it into an electric system, and enlarging and extending its service; and Whereas, to provide a fund to cover the purchase price of said property, and to carry out such purposes, it is necessary and desirable for the company to issue its bonds, secured by mortgage on the property or to be acquired by it; and

Whereas, although the board of directors of the company has full power and authority to order the issuance of such bonds, and the execution and delivery of such mortgage, yet it is desirable that the stockholders of the company take some formal action with respect thereto;

Now, Therefore, Be It Resolved, that the Tucson Rapid Transit Company, for the purposes aforesaid do issue its certain bonds for the aggregate principal amount of \$300,000, to bear date March 15, 1906, and to be payable twenty-two years from their said date (subject to be called in and retired prior thereto upon such terms as may be contained in the mortgage) in gold [37] coin of the United States of America, with interest at the rate of 6% per annum, payable semi-annually, and evidenced by coupons to said bonds attached; that to secure the payment of said bonds and coupons, the company execute its first mortgage or deed of trust to the International Trust Company, of Denver, Colorado, as trustee, such mortgage to constitute a first lien upon all the real, personal and mixed property, of whatever kind or character now owned or hereafter acquired by said company; that said bonds and moregage or deed of trust shall be in such form

and contain such provisions, terms and conditions, as to the board of directors and the officers of said company may seem best, such bonds to the aggregate amount of \$150,000 to be at once issued and certified, and be used and disposed of at such rate and upon such terms as the board of directors may determine, it being, however, contemplated that after the execution and issuance of such bonds to the aggregate amount of \$150,000, none of the remaining bonds shall be issued or certified except after the expenditure for new construction or new equipment at the rate of \$1,250.00 for each \$1,000. of additional bonds so issued or certified; and (3)

Whereas, the board of directors of said transit company thereafter and at a meeting thereof, duly called and held, did by unanimous vote of all the directors of the company, adopt the following resolution:

Whereas, the Tucson Rapid Transit Company has purchased all the property, plant and equipment of the Tucson Street Railway with the intention of converting it into an electric system and enlarging and extending its service; and

Whereas, to provide a fund to cover the purchase price of said property and to carry out such purpose it is necessary and desirable for the company to issue its bonds secured by mortgage on the property held or to be acquired by it; and

Whereas, the board of directors of said company

is fully authorized to order the issuance of such bonds and the execution and delivery of such mortgage;

Now, Therefore, Be It Resolved, that the Tucson Rapid Transit [38] Company for the purpose aforesaid, do issue its 370 bonds for the aggregate principal amount of Three Hundred Thousand Dollars numbered from 1 to 370, bonds numbered from 1 to 270 being each for the sum of One Thousand Dolars, bonds numbered from 271 to 320 for the sum of Five Hundred Dollars each: and bonds numbered from 321 to 370 for the sum of One Hundred Dollars each, all of said bonds to bear date of March fifteenth, 1906, and to be payable twenty-two years from their date in gold coin of the United States of America, of the present standard of weight and fineness, with interest at the rate of six per cent per annum, payable semi-annually, in like gold coin, and evidenced by coupons to said bonds attached; that to secure the payment of said bonds and coupons, the company execute a first mortgage or deed of trust to the International Trust Company, of Denver, Colorado, as Trustee for the holders of said bonds, such mortgage to constitute a first lien upon all the real, personal and mixed property, assets, revenues and corporate and other franchises of this company, now owned or hereafter acquired. That said bonds shall be subject to be called in and retired upon the payment during the first five years of a premium of three per cent, during the second

five years upon the payment of a premium of two per cent, and thereafter at par without premium. Bonds to the aggregate amount of One Hundred and Fifty Thousand Dollars shall be immediately certified and issued to the president and secretary of this company to be used in providing for the purchase of said property, plant and equipment, and the conversion of said railway lines into an electric system, and for the immediate extension thereof. After the execution and issuance of bonds to the aggregate amount of One Hundred and Fifty Thousand Dollars, no other bonds shall be issued or certified except after the valid and actual expenditure for new construction or new equipment at the rate of twelve hundred and fifty dollars for every one thousand dollars of additional bonds so issued or certified, the fact of such expenditure being certified to the Trustee by the president (or vice-president) and treasurer of the company. That the president and secretary of this company [39] be, and they hereby are authorized in the name and on behalf of the company, to execute the said bonds and to execute, acknowledge and deliver the said mortgage or deed of trust, such bonds and mortgage or deed of trust to be in such form and to contain such provisions and conditions as to them may seem best."

And (4)

Whereas, this indenture and the terms in which it now appreas, and the bonds as hereinafter in sub-

stance set forth, were duly examined and approved by said board of directors at said meeting and the execution, issuance and delivery thereof by the officers of the Transit Company, were authorized and directed.

And, Whereas, said bonds, with interest coupons attached, have been executed and are now ready to be certified by the Trustee and issued as authorized, and directed as aforesaid, said bonds being consecutively numbered from 1 to 370, inclusive, the bonds numbered from 1 to 270, inclusive, being in the denomination of \$1,000.00 each, the bonds numbered from 271 to 320 being in the denomination of \$500.00 each, and the bonds numbered from 321 to 370 being in the denomination of \$100.00 each, and the coupons attached to each of said bonds, bearing the number of the bond to which they are attached, being also consecutively numbered 1 to 44, inclusive, which bonds numbered from 1 to 270 inclusive and coupons thereon and the Trustee's certificate endorsed upon said bonds are substantially in the following form, the other bonds and coupons being in similar form though in different denominations as above set forth, to wit:

"United States of America.

First Mortgage Sinking Fund Six per cent, 22-Year Bond of

No. ——. \$1,000.00

The Tucson Rapid Transit Company, Total Authorized Issue \$300,000.

The Tucson Rapid Transit Company, a body corporate organized and existing under the laws of the Territory of Arizona, for value received, acknowledge itself indebted and hereby promises to pay, to the bearer, one thousand dollars in gold coin [40] of the United States of America, of the present standard weight and fineness at the office of the International Trust Company in the City of Denver, State of Colorado, or at the office of the Morton Trust Company, in the City of New York, State of New York, on the fifteenth day of March, A. D. 1928, with interest thereon in like gold coin at the rate of six per cent per annum payable semi-annually, on the 15th day of March and the fifteenth day of September of each year, at the office of the International Trust Company aforesaid, or of said The Morton Trust Company upon presentation and surrender of the annexed coupons as they severally become due. All payments upon this bond of both principal and interest are to be made without the deduction of any tax or taxes which the obligor may be required to pay, or to retain therefrom by any present or future laws of the United States of America, or

any of the states or territories thereof, the obligor hereby covenanting and agreeing to pay any and all such taxes. This bond is one of a series aggregating the principal sum of three hundred thousand dollars, consisting of three hundred and seventy bonds numbered consecutively from 1 to 370, the bonds numbered from 1 to 270 inclusive, being each for the sum of one thousand dollars, and the bonds numbered from 271 to 320 inclusive, being each for the sum of five hundred dollars, and the bonds numbered from 321 to 370 inclusive, being each for the sum of one hundred dollars, but otherwise all of said bonds are of the same date, tenor and effect, and all are equally secured by deed of trust of even date herewith, made, executed and delivered by the said The Tucson Rapid Transit Company, pursuant to the requisite, necessary, proper and authorized action (5) of its board of directors to The International Trust Company of Denver, Colorado, as Trustee, conveying all the franchises and property, real and personal, now owned or hereafter to be acquired by the Tucson Rapid Transit Company, all as in said deed of trust which has been duly recorded, and is a first lien on all the property therein described, more specifically mentioned and provided. After bonds to the aggregate amount of one hundred fifty thousand dollars have been issued and certified no additional bonds of the issue authorized hereby are to be issued or certified except after the [41]

valid and actual expenditure for new construction or new equipment at the rate of twelve hundred and fifty dollars for every one thousand dollars of additional bonds so issued or certified, the fact of such expenditure being certified to the trustee by the president (or vice-president) and treasurer of the company. This bond is entitled to the benefit of a sinking fund according to the provisions of the said Deed of Trust.

The Tucson Rapid Transit Company reserves the right to redeem and pay any and all of the bonds of this issue on any date for the payment of semi-annual interest, upon the payment of the principal thereof, together with the accrued interest, and in case of the redemption thereof within ten years from the date hereof, upon the payment of the certain premiums as provided by the trust deed herein referred to, after prior notice of its intention so to do, shall have been given as required by the terms of said trust deed. In the event of the nonpayment of any interest coupon hereto attached, or breach of any other condition in said deed of trust contained, the principal hereof shall become due in the manner provided in said deed of trust. The obligor hereby certifies that all acts, conditions and things required to be done precedent to and in connection with the issuing of this bond to make it a valid and enforceable obligation of said corporation as a matter of law, have been, in fact and law, properly done, have happened and

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been performed and did exist in regular and due time, form and manner as required by law, and that this bond is in all respects regular and valid. This bond shall not be valid unless the certificate endorsed hereon shall bear the signature of the said Trustee.

In Witness Whereof, the said The Tucson Rapid Transit Company has caused this bond to be sealed with its corporate seal, signed by its president and attested by its secretary, and has likewise caused each of the attached coupons to be authenticated by a lithographed facsimile of its treasurer's signature this 15th day of March, A. D. 1906.

THE TUCSON RAPID TRANSIT COM-PANY.

<u> </u>	Ву ——		
•		President.	
(Corporate Seal)			
Attest	t: ——		 ,
		Secretary.	[42]
((Coupon)		
30.00		_	\$30.00

________, Treasurer. (6)

(Trustee's Certificate)

The undersigned trustee named in the within bond and in the trust deed therein referred to certifies that this bond is one of a series of three hundred and seventy bonds specified in said deed of trust.

> THE INTERNATIONAL TRUST COM-PANY, Trustee.

> > By ————,

Vice-President.

(Registration)

This bond may be registered at the option of the owner upon the books of The Tucson Rapid Transit Company kept at the office of The International Trust Company of Denver, Colorado, such registration to be also noted hereon. If registered, it shall pass only by transfer on said books noted also on this bond, but it may be discharged from registration by being so transferred to bearer after which it shall pass by delivery until again registered. The coupons shall in all cases be negotiable by delivery, whether the bond itself be registered, or The trustee of the indenture within mentioned shall not be bound to take notice of, or in any way to see to the execution of any trust, express or implied or constructive, affecting the title to or ownership of this bond, or the principal or interest therein specified, or be affected by notice of any equity that may be subsisting in respect thereof.

Date of registry, name and address of registered owner, transfer agt."

Now. Therefore. This Indenture Witnesseth: That the said Transit Company in consideration of the premises and of one [43] dollar to it in hand paid by the Trustee, the receipt whereof is hereby acknowledged, and in order to secure the payment of said bonds and coupons and the due and faithful observance of each and all of the covenants and obligations of this deed of trust, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, hypothecate, pledge, assign, transfer, set over, release, convey and confirm unto the said party of the second part as trustee, and its successor and successors in this trust herein, and hereby created and declared, its and their assigns, forever, the following described premises situate, lying and being in the city of Tucson, in Pima County, in the Territory of Arizona, to wit:

Lot numbered eleven (11) in block numbered fifty-one (51) of the said city of Tucson, according to the official survey and the map thereof; also all the other property of the Transit Company including all lands, real estate, rights of way, and all privileges and appurtenances connected therewith, all licenses, easements and buildings, all its road bed, tracks, railway plant, machinery, engines, boilers, dynamo electric machines, generators, motors and all other electrical and mechanical

appliances and apparatus, rolling stock, cars, poles, lines, wires, conduits, tools, fixtures, supplies and all other property, real, personal and mixed, of whatever description and wherever situate, and whether now held or hereafter acquired by it, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging, or in anywise appertaining, all things in action, stocks, bonds or other securities, contracts, claims and demands of the Transit Company, whether now owned or hereafter acquired, together with all and (7) singular the rents, issues, profits, income, privileges, immunities and franchises, corporate or otherwise, growing out of or appertaining to said property of said Transit Company, and whether now owned or hereafter acquired, and also all the estate, interest and claim whatsoever in law as well as in equity which the said Transit Company has in and to the premises and property hereby conveyed (or intended to be) 'unto said Trustee, its successors and assigns, and with full power on the part [44] of the Trustee, so far as it lawfully may, to succeed to or enjoy all the rights, privileges, immunities and franchises, corporate and otherwise, of said Transit Company.

To Have and to Hold, the above-described property, rights, franchises and privileges unto the said party of the second part, its successor and successors in said trust, and their and each of their assigns to their own proper use, benefit and behoof

forever, but in trust, nevertheless, under the terms of this indenture for the uses and purposes herein set forth. For the further carrying into effect of this conveyance the Transit Company hereby appoints the Trustee and its successors in the trust. the attorneys for the Transit Company, in its name and behalf, to ask, demand and receive payment and delivery of any and all sums of money, notes, chattels, and effects assigned and transferred to the Trustee by this indenture, or intended so to be, and to give effectual releases and discharges in the name of the Transit Company to the party or parties making such payment or delivery. And for any or all of the purposes aforesaid, or of this instrument, the Trustee may appoint an attorney, or attorneys, agent or agents, may from time to time revoke such appointments, may use the name of the Transit Company and generally act in relation to the premises as it or they may think best.

Article I. Said property rights, privileges and franchises, subject to the terms, conditions and agreements herein contained, shall be held and disposed of by the trustee for the equal *pro rata* benefit and security of the person or persons who are or shall be the lawful owners of the said bonds and coupons without any preference of one bond over another, by reason of priority of issue, or of any act or thing whatsoever, and without any preference of bond over coupon, provided, however, that until default shall be made in the payment of prin-

cipal or interest of said bonds or some of them, or in the performance by the Transit Company of some one or more of the covenants of the said bonds or coupons, or of this indenture, the Transit Company shall possess, operate, maintain and enjoy all the franchises, rights and property of every kind conveyed by this [45] deed of trust, and every part thereof, with the appurtenances, and to take and use the income, rents, issues and profits thereof, in the same manner and with the same effect as if this deed had not been made.

Article II. If the Transit Company shall well and truly pay the principal of said bonds, and each of them, together with the interest thereon, when the same shall become due and payable, according to the true intent and meaning of these presents, and shall well and truly perform all the other things required by these presents to be done by it, then and thereupon all the estate, right, title and interest of the trustee hereunder shall cease and determine.

Article III. In case the Transit Company shall fail to pay said coupons or any of them, according to the tenor thereof, on the presentation of the same, respectively, or if the (8) Transit Company shall fail to observe and perform any of the requirements made of it by these presents, or by said bonds, or coupons, and such default or failure shall continue for the space of sixty days, then the Trustee may in writing notify the Transit Company of such default or failure, and if the same

shall continue for thirty days after the receipt of such notice, then and thereupon the whole amount of the principal of said bonds, together with all accrued and unpaid interest (unless such default be waived by the holders of seventy-five per centum in amount of the bonds outstanding, as hereinafter provided) shall, at the election of the Trustee (notwithstanding any provisions to the contrary in said bonds), be deemed immediately due and payable and that the trustee shall not be required to signify such election in any manner other than by instituting proceedings to foreclose, whether by entry upon the premises, by beginning suit, or action for foreclosure, or by commencing publication of notice of the sale of the mortgaged property. In case of default or failure as aforesaid, or in case of the default in the payment of said bonds, or any of them, when they fall due and become payable, it shall be lawful, but not obligatory upon the Trustee to enter upon and take possession of the mortgaged premises, making the entry upon [46] any portion thereof in the name of the whole, and to operate and manage the property and business of the Transit Company, collecting all the revenues, issues and profits of the property and business until the net earnings and profits after the payment of all the reasonable and just charges and expenses of the Trustee, its agents and attorneys, shall have been sufficient to repair and make good all the defaults

of the Transit Company under these presents. After default as aforesaid, the Trustee may also or instead of so doing, and with or without taking any possession of the property, proceed to sell and dispose of, by one sale or successively through several sales, all and singular the premises and property, rights, interest, and franchises hereby conveyed and mortgaged or intended to be, and such portion thereof, as the Trustee may deem necessary, at public auction, in the City of Tucson, in the county of Pima, and Territory of Arizona, on such terms as to credits, partial credits, and security for payment, as the Trustee may think proper, having first given public notice of the time and place of such sale or sales, by advertisement printed once a week for at least four consecutive weeks in some newspaper printed in the city of Tucson, and no other notice or demand whatsoever to or upon the Transit Company prior to such sale or sales shall be necessary. The Trustee is authorized to adjourn such sale or sales from time to time, in its discretion, giving what it shall deem reasonable notice of the time and place to which the same may be adjourned. The Trustee is hereby further authorized and empowered, either in its own name or the name of the Transit Company, to make, execute, acknowledge and deliver to the purchaser or purchasers at any such sale, good and sufficient deeds of conveyance of the property sold, and any sale made as aforesaid shall be a perpetual bar both

in law and equity against the Transit Company and all persons claiming by, through or under it, from claiming the rights, interests or franchises so sold. or any interest therein, and for the purpose of effecting such conveyance the Trustee is hereby constituted irrevocably the Attorney of the Transit Company. As affecting the title to any property purchased at any such sale, the statement set forth in any affidavit [47] made by the president or vice-president of the Trustee, and appended to the deed of conveyance, relating to the time or manner of giving notice of any default, or to the time and manner of giving notice of such sale, shall not be open to contradiction or dispute by any party or parties, but shall conclusively be deemed to be true. The Trustee or any one or more of the bond-(9) holders or any person in its or their behalf may purchase the property at any sales of the mortgages premises, whether made under the power of sale hereinbefore contained, or pursuant to a judicial decree, and the receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money.

Article IV. The foregoing provision for foreclosure under the power of sale aforesaid is cumulative with the ordinary right of foreclosure by entry, by suit or by action, and that the trustee is hereby empowered to have and exercise such right and all remedies thereto pertaining, against all of the mortgaged property at one time and in one proceeding,

or against portions of it successively and in separate proceedings. And the Transit Company hereby waives any and all rights of stay and redemption now or hereafter provided by the statutes of the Territory of Arizona. If the property to be disposed of in parcels, each person shall take good title notwithstanding that enough may have been already received to satisfy the debt hereunder. The determination of the Trustee to institute foreclosure proceedings by suit or action, instead of by sale under the power aforesaid, shall not be construed as a waiver of the right to immediate possession on default declared or of its rights to the income, revenues and profits of the Transit Company. At any time after default as aforesaid, the Trustee may, if it so desires, be entitled to the appointment of a receiver having such powers and duties and acting under such limitations as the Court making the appointment shall confer and impose. In case the Trustee shall take possession or make sale of the mortgaged premises in pursuance of the provisions hereinbefore contained, all of the keys, books and papers of the Transit Company in any way relating to the mortgaged property or operation or management of the same [48] shall upon request. be delivered by the Transit Company to the Trustee or its agents, and it or they, by itself or themselves. may take possession of such keys, books and papers and hold and use the same, without any hindrance or impediment whatsoever, by or on the part of the

Transit Company or of any person acting or claiming to act by, through or under it. By whatever method of proceedings the mortgage may be foreclosed, the order and method of distributing any proceeds realized on the sale or sales of the property shall be as hereinafter provided. Outstanding bonds and coupons of the issue hereby secured may themselves be used in or toward the payment of the purchase money bid, in lieu of cash, at the net sum distributable thereon.

Article V. Out of the proceeds arising from such sale or sales the Trustee shall first defray the expenses thereof (including its just and lawful charges for services and expenses and a reasonable allowance for attorney or counsel fees), and refund any advances or expenses reasonably incurred by it in operating, maintaining, or managing the property or business of the Transit Company while in possession, and all payments made for taxes, assessments, insurance and other proper charges upon said premises and property, the balance of said proceeds shall be applied and paid as follows: If said balance of such proceeds is sufficient therefor, to the payment of the whole amount of the principal of the bonds and coupons, hereby secured, whether then or thereafter due and payable, and interest thereon up to the time of such payment, together with interest on overdue coupons. If such balance of such proceeds shall be insufficient to pay in full such whole

amount for principal and interest as aforesaid, then the principal and interest of said bonds (10) and overdue coupons, shall be paid, without preference or priority of principal over interest, or interest over principal, or any installment of interest over any other installment of interest, ratably to the aggregate of such principal and unpaid interest, together with interest on overdue coupons. If after payment of the principal of said bonds and all interests as aforesaid, computed to the time of making the payment, any balance of the said proceeds shall remain, the remainder shall [49] be paid over to the Transit Company or its assigns.

Article VI. Before proceeding to take possession of the mortgaged property or to foreclose this deed or mortgage (whether foreclosure be made by sale, under power, or otherwise), the Trustee shall have the right, first to require from the bondholders satisfactory indemnity against the loss and liability that may be incurred by it in so doing, and, upon the tender of such indemnity, by the holder or holders of one-quarter of the bonds at that time outstanding and unpaid, whether such indemnity shall have been previously requested of them or not, it shall be the duty of the Trustee, in case the default of the Transit Company continuing for the space of thirty days after written notice as aforesaid and not waived as hereinafter provided, to take such action, pursuant to the terms, of this deed, as the parties tendering the indemnity may in writing request. But if any such action shall be requested which the Trustees shall deem inconsistent with the method of procedure specified in a request of other of the bondholders whenever made, the Trustee may adopt whichever method shall to it seem best or pursue such modified course as its counsel advise, keeping always within the terms of this indenture.

Article VII. No delay or omission by the Trustee in exercising the rights and powers herein granted shall be held to exhaust or impair such rights and powers or be construed as a waiver thereof: but it is hereby mutually agreed that the holder or holders of seventy-five per centum in amount of the bonds at the time outstanding, may by instrument in writing, signed and acknowledged by them at any time, whether before or after the institution of the foreclosure proceedings, and upon payment to the Trustee of such expenses as it may have incurred by reason of default, waive or instruct the Trustee to waive any default on the part of the Transit Company, provided, always, that no such action on the part of the bondholders shall extend to or be taken to effect any subsequent default or impair the rights resulting therefrom. The Trustee agrees on any default [50] sixty days continuing in the payment of interest on the said bonds or any other default so continuing, on the written request of the holder of any of said bonds, to give written notice to the Transit Company of such

default under this indenture as the person requesting such notice to be given shall allege to exist. No bondholders or any trustee hereunder shall, under any circumstances, have recourse to any personal or statutory liability against any stockholder, director, or officer of said Transit Company, whether such liability now exists or hereafter accrues; but each such trustee and bondholder shall look for the payment of the bonds and interest thereon solely to the corporate assets and franchises of the Transit Company, it being understood that these assets shall not be construed as embracing any claim which might, under other circumstances, be enforceable either by the creditors of the Transit Company, by a receiver in their behalf, or by the corporation itself, against a stockholder, officer, or director, under any statute now or hereafter in force, or against the stockholders by reason of any alleged insufficiency (11) in the payment for shares of stock.

Article VIII. The Transit Company agrees at any time on request to furnish the Trustee a schedule showing with reasonable detail the items of property covered by the lien hereof, or intended so to be. The Trustee may from time to time release from such lien any of the mortgaged property when, in its judgment, based upon the certificate of some disinterested person selected by the trustee with reasonable care for the purpose of investigating the question, other property of equal value is substi-

tuted therefor, and subjected to the lien hereof, so that such release shall not impair the security of the bondholders, or such property may be released from this mortgage upon the Transit Company making a cash deposit with the Trustee equal in amount to the value of the property to be released, as appraised by such disinterested person and certified by him to the Trustee in writing, and upon such receipt of such deposit, the trustee shall execute and deliver a release of the property in question. The funds so deposited may be used by the Transit [51] Company in the purchase of new or additional property, equipments or materials useful in the business thereof or in carrying out the purpose of its incorporation; and such funds shall be paid to the Transit Company by the Trustee upon a requisition signed by the president and treasurer of the Transit Company, in accordance with a duly certified copy of a resolution of the board of directors of the Transit Company specifying that the amount thereby requested is to be used for such purposes, or if the Transit Company shall prefer, it may use said deposit or any portion thereof, in calling and redeeming outstanding bonds pursuant to the provisions contained in Article X. Property added before the execution of the release may be treated as substituted for the property released, provided the Trustee shall be notified at or before the actual acquisition and possession of the new or additional property that the same is intended as the basis of a future release. All expenses attendant upon such investigation or otherwise upon the securing of such release shall be paid by the Transit Company, and all parties in interest agree that the Trustee shall not suffer or incur any loss or liability in the execution of any such release, or payment of any funds so deposited, if it acts in good faith on the statement and recommendations set forth in a certificate made as above provided. The Transit Company further agrees that it will from time to time make such additions to or repairs on the property, buildings, machinery, railway lines, or other equipment, connectioned with the mortgaged plant, as may be required to keep and maintain such plant in first class repair and in condition for performing good and efficient service.

Article IX. The Transit Company hereby expressly covenants and agrees that it will pay any and all taxes, assessments, and governmantal charges, assessed or laid upon the mortgaged premises, or any part thereof or interest therein, or upon the Trustee in respect to the same; that it will not suffer any lien superior to the lien hereof to attach to the mortgaged property or any part thereof; that it will preserve and maintain all its franchises and rights now or hereafter [52] possessed by it; that it will conform to all lawful statutes, orders, ordinances, and regulations affecting the corporation, its business and property; and that it will

keep said premises and property at all times insured in such sums as shall reasonably protect the insurable property, and by such insurers as the Trustee may direct, payable in case of loss to the Trustee as its interest may appear, and will, upon proper request therefor, (12) deliver to the Trustee the policies covering said insurance. In case of loss the Trustee shall allow the insurance money received to be applied by the Transit Company toward the renewal or repair of the property destroyed or injured, if the Transit Company so request in writing (provided there be at the time of the application of the money no default, hereunder known to the Trustee), and shall, upon such request, in the absence of such default, pay said money over to the Transit Company for said purpose, on receipt of statements signed and sworn to by the president and treasurer of the Transit Company, accompanied by receipted vouchers to the effect that said property has been replaced or substituted by a repaired or new plant, building, or other property, equal in value to the amount of money to be paid over on said statements and vouchers; but if the Transit Company shall not, within sixty days from the adjustment of the insurance request in writing to have the insurance money so applied, or in case of any default, then existing, known to the Trustee and not made good by the Transit Company on thirty days' written notice then the money shall be invested by the Trustee and form part of the mortgage or trust property, and shall, together with all interest and accumulations thereon, be subject to the provisions of this indenture, in like manner as the other property hereby conveyed, except that the possession of the security shall be held by said Trustee, provided always, that the Trustee shall in any event, if requested in writing by the holders of three-fourths of the outstanding bonds, pay over to the Transit Company the insurance money on receipt of statements and vouchers of the description aforesaid. The Trustee may sell and reinvest the securities at its discretion [53] and may invest in other than so-called chancery securities.

Article X. The Transit Company hereby expressly reserves the right to pay and redeem said bonds or any of them, on any day for payment of semi-annual interest, by paying in gold coin, as aforesaid, for every bond called, the amount of the principal thereof, together with all accrued and unpaid interest thereon, and (if called within ten years from the date hereof), in addition thereto a premium thereon as follows: If called within the first five years from this date, three per cent upon the principal thereof; if within the second five years, two per cent, provided notice thereof is given by the Transit Company to the holder or holders of the called bond or bonds by publication once a week for at least four successive weeks in some news-

paper printed and published in the city of Tucson, Territory of Arizona, and also once a week for at least four consecutive weeks in some daily newspaper printed and published in the City of Denver, Colorado, the first publication of notice in each case to be at least four weeks before the day fixed in said published notice for such redemption, and at such date all interest on the bonds so called shall cease. But all such calls for redemption shall be made through the Trustee and the numbers of the bonds called shall be determined by said Trustee by the casting of lots.

It is further expressly understood and agreed that if, after any bond has been called for the payment in accordance with the foregoing provisions, the same shall not be presented to the Trustee for redemption on or before the day fixed therefor in the published notice, the Transit Company may deposit with the Trustee to the credit of such bond, designated by the number thereof, a sum of money in gold equal to the principal thereof, and in addition thereto the premium hereinabove specified, together with a sum in like gold coin, equal to the (13) interest accrued on the bonds up to date fixed for redemption as aforesaid, and remaining unpaid, which deposit shall be full payment of the bond and coupons belonging thereto as between the Transit Company and the holder thereof. Such deposit in the [54] hands of the Trustee shall draw no interest. Thereupon and thereafterwards, such

bonds and the coupons thereto belonging shall be excluded from participation in the lien and security afforded by these presents and the holder shall look for the payment of the bond and accrued interest only to the sum so deposited in the hands of the Trustee, and in no event to the Transit Company; but said sums so deposited shall be held by the Trustees to the credit of and for the payment of said bonds, and shall be paid by the Trustee to the holder thereof upon the presentation and delivery to it of such bond, together with all the outstanding coupons thereto belonging, and upon the presentation to the Trustee, canceled, of all said authorized issue of bonds and coupons, which at the time shall have been issued and outstanding, or upon presentation of a portion thereof canceled (all of said bonds having been duly called for payment) and the deposit by the Transit Company with the Trustee of a sum of money in such gold coin sufficient, together with all amounts then on deposit, under Article XI, to pay at the rate aforesaid, all of said bonds and interest that are not presented to the Trustee in accordance with the call therefor, the Trustee shall cancel and discharge this mortgage or deed of trust as fully and to the same effect as if the total issue of said bonds and coupons had been duly paid to the Trustee at the maturity thereof. The bonds called and redeemed under this Article X, together with the coupons thereto belonging, shall be forthwith canceled by the Trustee and delivered with the coupons belonging thereto to the Transit Company. It is further expressly understood and agreed that the Trustee, upon written request of the Transit Company, may from time to time advertise for proposals for the sale to it through the Trustee of bonds of this issue by notice printed twice each week for at least two successive weeks in some daily newspaper printed and published in said City of Tucson, and also for a like time in some daily newspaper printed and published in the city of Denver, and that in case proposals for the sale of such bonds at rates not exceeding par value thereof, together with accrued interest and (during the first ten years) the several premiums hereinabove mentioned, [55] shall be received and opened by the Trustee on or before the expiration of the time limited in such notice for the submission of proposals, the Transit Company may purchase all offered bonds or any of them at the rate at which the same are offered (not, however, exceeding the rates hereinbefore mentioned). Payment for and delivery of the original of the purchase bonds shall be made at the office of the Trustee and all the bonds so purchased, together with the coupons belonging thereto, shall be canceled by the Trustee and delivered to the Transit Company.

Article XI. The Transit Company hereby covenants and agrees that after January first, A. D. 1914,

it will apply the net earnings from all of its business and operations in each fiscal year thereafter, ending on December 31st of each year, up to but not exceeding the sum of one thousand dollars for each mile of main road operated, so far as the same may be available after paying or otherwise providing for all its fixed charges, to the sinking fund hereinafter in this Article XI created. If said net earnings in any such fiscal year available for the purpose shall not amount to the sum of one thousand dollars for each mile of main road operated, so much of said amount as shall remain unearned, shall not accumulate. It is expressly (14) understood and agreed by and between the parties hereto. and all persons who shall be or become the owners of any bonds or coupons secured hereby, that the words "net earnings" shall be held to signify the sum remaining of the gross profits, income and receipts of the properties and operations of the Transit Company from all sources during each of its fiscal years (after seven years from this date) after deducting therefrom all the expenses of maintaining, operating, renewing, replacing and repairing its said property and premises, including such reasonable improvements or betterments thereof and additions thereto as shall be deemed by it necessary for the safe, proper, economical and profitable operations of the same, and also after deducting all taxes or assessments imposed or levied upon or against the Transit Company, its property or business, or the income or earnings thereof, and also deducting the principal and interest [56] of all its indebtedness then accrued other than the principal of its bonded indebtedness. The sinking fund hereby created shall be constituted and applied as follows: On or before February 1st. 1915, and on or before the first day of February each year thereafter, until and including February 1st, 1928, the Transit Company shall furnish to the Trustee a statement of its net earnings during the preceding fiscal year so set apart and applicable to the purposes of this sinking fund and shall pay to the Trustee the sum so set apart and stated. Trustee shall have the right to inspect the books of the Transit Company by its proper officers or by an expert accountant appointed by the Trustee and paid by the Transit Company for the purpose of verifying or correcting such statement, provided however, a thirty days' notice be given the Transit Company by the Trustee that it desires to make such inspection. If any resulting difference as to said statement shall not be adjusted by agreement between the Transit Company and the Trustee, the Trustee may, and upon being duly indemnified by the holders of a majority of the bonds secured hereby for all costs and expenses to be by it incurred thereby, shall institute proceedings against the Transit Company in a court of equity of competent jurisdiction for an accounting as to the net earnings for the fiscal year covered by said statement available for and applicable to this sinking fund, and in case the final decree therein rendered shall be that the amount of net earnings so available and applicable is in excess of the sum stated, and paid by the Transit Company as aforesaid, the Transit Company shall make good such deficiency within three months from the entry of said final decree, failing which the Transit Company shall upon expiration of said three months, and not until then, be deemed in default as to the said sinking fund payments, within the meaning of this indenture, and the Trustee shall thereupon be authorized to proceed as for a default as hereinbefore provided. The remedy herein provided for ascertaining in case of dispute the amount of net earnings [57] available and applicable for the sinking fund, shall be exclusive of all others, all moneys paid into the sinking fund shall be used to pay off and cancel by one or both of the two methods provided for in the foregoing article, (i. e., by call and redemption at the hereinbefore specified rates and accrued interest, or by purchase pursuant to offers made after advertisement for proposals to sell, or by both such methods), bonds of the issue hereby secured; and the Trustee on its part agrees from time to time, upon receipt of the sums deposited with it for the purpose of such redemption or purchases, to forthwith advertise for proposals as hereinabove provided for the sale to it of bonds at rates not exceeding those hereinabove specified, and in case bonds shall not be offered at less than said rates, then the Trustee shall forthwith call bonds for redemption and (15) redeem same at specified rates; and all bonds so called and redeemed or purchased under this Article XI, together with the coupons attached, shall be forthwith canceled by said Trustee and delivered to the Transit Company. The provisions of Article X so far as applicable, shall apply to and affect the method of purchasing and redeeming bonds under this Article XI.

Article XII. The Transit Company covenants and agrees to cause this mortgage or deed of trust at all times to be kept recorded, and filed in such manner and such place as may be required by the laws of the state or territory in which the property now or hereafter embraced in this instrument is situated, so as to preserve and protect the security of the bondholders and all rights of the Trustee; and agrees also to execute, acknowledge and deliver to the Trustee and properly record and file a confirmation of this mortgage or indenture, or a renewal thereof, or a new mortgage, when, in such manner, and so often as may be necessary fully to protect the mortgagees' or trustee's title or interest and the security of the bondholders, each such confirmation, renewal or new mortgage to include all property of the Transit Company hereafter acquired, and a conveyance thereof to be made for the same purposes and on the same trusts as those set forth in this original indenture. And the Transit Company shall and will, from time to time, during the existence [58] of the trust, make, execute, acknowledge and deliver all such further instruments and conveyances as, in the opinion of the legal counsel of the Trustee may be necessary or proper to facilitate the execution of said trust or to further secure said bonds, all of which additional instruments and conveyances the Transit Company agrees to keep properly filed and recorded.

Article XIII. The Transit Company shall and will also at any and all times, upon the written request of the Trustee, furnish to the Trustee upon blanks provided by it for the purpose, a statement in writing, showing accurately the Transit Company's financial condition, including in such statement especially an exhibit of the Transit Company's earnings and operating expenses, given month by month for and during a period of at least a year prior to the time of making such request.

Article XIV. After the delivery of said bonds to the Trustee for certification, the Trustee shall certify the same to an amount not exceeding in the aggregate one hundred and fifty thousand dollars, and shall deliver the same so certified to the Transit Company, or its order, and the said Trustee may without any formality, record, requisition, proof or requirement, return the said bonds to the said

Transit Company, or its officers or agent, from whom the said bonds are received by the said Trustee. After the delivery and certification, however, of bonds to the aggregate amount of one hundred and fifty thousand dollars, no additional bond or bonds shall be certified by the Trustee except upon presentation to him, duly signed by the president (or vice-president) and treasurer of the Transit Company of a certificate to the effect that there has been actually expended for new construction or new equipment at the rate of twelve hundred and fifty dollars for each one thousand dollars of additional bonds so to be certified. And the said Trustee may upon the presentation of such certificate and without any further formality, requisition, proof or requirement, certify and return such additional bond to the officer or agent of the Transit Company from whom they are received. The said Trustee shall in no event be liable or answerable for the use made of [59] any of said bonds after the certification and delivery or return (16) of the same as aforesaid, and the receipt therefor by an officer or agent of said Transit Company shall be full acquittance to the Trustee for certification and delivery, and only such bonds as shall be certified by the said Trustee shall be entitled to the security hereby given.

Article XV. No holder or holders of any of the bonds or coupons hereby secured shall have the right to institute any suit, action or proceedings

at law or in equity for the foreclosure of this mortgage, or the execution of the trust hereof, or for the appointment of a receiver or for the sale of the mortgaged premises, unless the said holder or holders shall have first given notice in writing to the Trustee of default having occurred and continued as aforesaid, and unless a majority in amount of the holders of the bonds then outstanding having made a request in writing to the Trustee therefor and having afforded it a reasonable opportunity to proceed to exercise the powers hereinbefore granted, and having furnished to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred thereby, the Trustee shall have failed or refused to take proceedings as required.

Article XVI. The Trustee shall be entitled to be reimbursed for all proper outlays of whatever sort or nature to be incurred in or about this trust; and to receive a reasonable compensation for any dities which it may at any time perform in the discharge of the same, and all such fees, commissions, compensations and disbursements shall constitute a first lien on the mortgaged property and premises and on all sums in its hands hereunder. It shall be entitled to advice of counsel in all matters concerning the trust and shall be held only to the exercise of reasonable care and diligence in relation to taking possession of, controlling, operating, managing and selling the premises and property

aforesaid, or otherwise carrying out the provisions of this instrument. When the Trustee acts by agents or attorneys it shall not be responsible for their negligence or wrongdoing; but it shall be held to the exercise [60] of reasonable care in selecting, retaining and discharging them. The Trustee shall not be bound to recognize any person or party as the holder of any of said bonds, nor to take any action at his request unless his bond or bonds are submitted to the Trustee for inspection or his ownership thereof is otherwise shown to its satisfaction; and the Trustee may, if it so desires, require the bond or bonds so submitted to be deposited with it and retained until it shall have completed the action requested by sich bondholder. Nor shall it, prior to notice of default, continued as aforesaid, be any part of the Trustee's duty to effect insurance against fire or other damage on any portion of the mortgaged property, or to renew any policies of insurance or to keep itself informed or advised as to the performance of any of the Transit Company's covenants, or to the payment, or discharge of any taxes, assessments or liens which may be imposed upon the property, real or personal, sought to be affected by this mortgage, or to require the payment or discharge of such taxes, assessments or liens; but the Trustee shall have the right, in case of neglect by the Transit Company, to attend to any of these matters. No Trustee hereunder shall have any responsibility as

to the validity of this mortgage or as to the execution, acknowledgment, recording or renewal hereof, or as to the amount of adequacy, as security, of the property hereby conveyed. The recitals herein contained are made by the Trust Company solely (17).

Article XVII. It is further agreed that the Trustee may, at any time, resign the trust by written notice delivered, or properly given to the Transit Company, thirty days before the resignation takes effect, and that in case of such resignation or removal or incapacity of the Trustee by reason of insolvency, or other cause, the Transit Company shall have the right to nominate, and appoint a successor to the said office of Trustee, with the consent in writing of the owners of a majority of the bonds hereby secured, at the time outstanding and unpaid. But any vacancy of more than thirty days standing may be filled by any court having jurisdiction on application of the outgoing Trustee or any person interested. No bond shall be required [61] of any trustee, unless ordered by Court for cause shown. Upon the appointment of any successor to the trust by either method above mentioned, all of the mortgaged or trust property shall immediately and without conveyance vest in the new Trustee, but the outgoing trustee shall nevertheless, at the request of any person interested, but at the expense of the Trust and upon payment to it of such amount as may be due it hereunder,

execute, acknowledge and deliver to the new Trustee deeds of conveyance or other instruments in writing as may be appropriate to vest or confirm in the new Trustee the mortgaged or trust property.

Article XVIII. The term "Trustee" as employed in this instrument shall be taken to mean the Trustee hereunder for the time being, whether the said party of the second part or its successor or successors in said trust.

IN WITNESS WHEREOF, said The Tucson Rapid Transit Company has caused its corporate name to be hereunto subscribed by William S. Iliff, its president, and its corporate seal to be attached and attested by Charles K. Durbin, its secretary, and said The International Trust Company has caused its corporate name to be hereunto subscribed by Frank B. Gibson, its vice-president, and its corporate seal to be attached, and attested by S. G. Gill, its secretary, the day and year first herein-before written.

THE TUCSON RAPID TRANSIT COM-PANY,

By WILLIAM S. ILIFF,

President.

(Corporate Seal)

Attest: CHARLES K. DURBIN,
Secretary.

THE INTERNATIONAL TRUST COM-PANY,

By FRANK B. GIBSON,

Vice-President.

(Corporate Seal) Attest: S. G. GILL,

Secretary.

State of Colorado, City and County of Denver,—ss.

On this 19th day of April, A. D. 1906, before me, Allan M. Culver, a notary public within and for the city and county of Denver, and state of Colorado, personally appeared William S. Iliff, the president and Charles K. Durbin, the secretary, of The Tucson [62] Rapid Transit Company, each of whom is to me personally known and known as such officer respectively, and each acknowledged that he executed the foregoing instrument in his respective capacity as president or secretary of the said company as the free act and deed of said company by each of them voluntarily executed, and the said William S. Iliff and Charles K. Durbin, being by me duly sworn, did depose and say each for himself that the seal affixed to the foregoing instrument is the (18) corporate seal of said The Tucson Rapid Transit Company and that said seal was affixed thereto, and the said instrument signed by them, respectively, as president and secretary of the said company by order of the board of directors thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Denver, Colorado, the day and year first above written.

My Commission will expire February 28, 1907.

[Notarial Seal] ALLAN M. CULVER,

Notary Public.

State of Colorado, City and County of Denver,—ss.

On this 19th day of April, A. D. 1906, before me. a notary public within and for the said city and county of Denver, in the state of Colorado, personally appeared Frank B. Gibson and S. G. Gill, who are to me personally known and known to me to be respectively the vice-president and secretary of The International Trust Company, and they acknowledged to me, each for himself, that they executed the foregoing instrument in their respective capacities as vice-president and secretary of the said company, as the free act and deed of said corporation by them, and each of them voluntarily executed, and the said Frank B. Gibson and S. G. Gill being by me duly sworn, did depose and say, each for himself, that the seal affixed to the foregoing instrument is the corporate seal of said The International Trust Company and that said seal was attached thereto and the said instrument signed by them, respectively as [63] vice-president and secretary of the said company by authority of the Board of Directors thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Denver, Colorado, the day and year first above written.

My Commission will expire February 28, 1907.
[Notarial Seal] ALLAN M. CULVER,
Notary Public.

State of Arizona, County of Pima,—ss.

Frank E. Russell, being first duly sworn, deposes and says: That he was, on the 15th day of March, 1906, the general manager of The Tucson Rapid Transit Company, a corporation, and the mortgagor in the above deed of trust, and that continuously to the present time and now has been and is general manager of said company; that the residence and principal place of business of said company was on the 15th day of March, 1906, and continuously, and now is, in the city of Tucson, Pima County, Arizona; that said mortgage attached hereto or deed of trust was at the time of its issuance and execution and now is bona fide and was made without any design to defraud or delay creditors.

FRANK E. RUSSELL.

Subscribed and sworn to before me this 27th day of August, A. D. 1918.

[Notarial Seal] G. H. LANGWORTHY, Notary Public, Pima County.

My commission expires Nov. 19, 1921, Arizona. (19)

State of Colorado, County of Denver,—ss.

Horace B. Brooks, being first duly sworn, deposes and says: That he is Secretary of The International Trust Company, a corporation organized and existing under and by virtue of the laws of the state of Colorado, and was such at the time of the execution of the attached mortgage or deed of trust executed [64] by The Tucson Rapid Transit Company to The International Trust Company; that the said mortgage or deed of trust was at the time of its execution and now is bona fide and made without any design to defraud or delay creditors.

HORACE H. BROOKS,

Subscribed and sworn to before me this 30th day of August, A. D. 1918.

[Notarial Seal]

FRANK G. HARRINGTON.

Notary Public.

My Commission expires Sept. 1st, 1919.

That the said indenture of trust was duly recorded on the 23d day of April, 1906, in the office of the County Recorder of the county of Pima, said State of Arizona, in Book 21 of Mortgages, at page 229; that thereafter and on the 4th day of September, 1918, the said indenture of mortgage was duly filed in the said office of the said County Recorder as a chattel mortgage.

IV.

That as appears from said indenture, and as here-tofore set forth herein, certain affidavits as to the good faith of said mortgage were not attached to the said original mortgage as so recorded, but were executed and attached to said mortgage, on or about the 30th day of August, 1918, and were attached at or about the time that the said mortgage was filed as a chattel mortgage, as hereinbefore set forth, and that the said original mortgage, as so executed, delivered and accepted and recorded did not contain said affidavits.

V.

That, as appears from the aforesaid indenture of trust, the same was executed and delivered to secure the principal (20) sum of three hundred thousand dollars (\$300,000.00), together with interest thereon at the rate of six per cent per annum, payable semiannually, said interest being evidenced by coupons attached to said bonds, and that said bonds were payable twenty-two years from their said date, to wit, on the 15th day of March, 1906. That of the issue of said bonds as provided for in said indenture of trust, there were issued and certified by your complainant as [65] trustee, and at or about or shortly after the execution and delivery and acceptance of said indenture of trust, one hundred fourteen thousand eight hundred dollars (\$114,-800.00) of said bonds, and that, as complainant and petitioner is advised, and believes, no other or fur-

ther bonds than the said \$114,800.00, par value, were issued. That the whole of said amount of said bonds, to wit, \$114,800.00, par value thereof, are now outstanding and in the hands of the purchasers thereof or their assignees, are wholly unpaid. That as your petitioner is advised and believes, and upon information and belief avers, of the said interest coupons attached to said bonds and as fully set forth and described in said indenture of trust, there was paid, on or about the 15th day of August, 1906, a portion of said coupons, to wit, the first interest coupon of approximately ninety of said bonds were paid. and that the remainder of the coupons on said installment of interest, and being the first installment of interest, were not paid; that thereafter none of said interest coupons have ever been paid, no interest having been paid whatsoever on said bonds from the date of their issuance up to the present time, except as aforesaid, the interest on approximately ninety of said bonds, and being the first installment of interest due on said bonds. That, as aforesaid, the whole of said interest on said bonds from the date of their issuance, March, 1906, has not been paid in whole or in part, except for part of the said first installment, as aforesaid, and (21) that the whole thereof are now in the hands of the purchasers of said bonds or their assignees, and are wholly unpaid. That, as aforesaid, all of the \$114,800.00 of said bonds, so certified and delivered

as aforesaid, are now in the hands of the purchasers thereof or their assignees, and wholly unpaid.

VI.

That after the execution of said indenture of trust and the due issuance of said bonds aforesaid thereunder, the Morton Trust Company of the city of New York was merged or taken [66] over by the Guaranty Trust Company, of the said City of New York, the said Guaranty Trust Company being the successor of the said Morton Trust Company.

VII.

That on or about the 27th day of August, 1918, the owners and holders of approximately ninety per cent of the said outstanding bonds and interest coupons, presented the said coupons of the said bonds to the said International Trust Company, complainant and petitioner herein, and to the said Guaranty Trust Company of New York, for payment, and did at said time, and at the respective offices as aforesaid of said companies, demand payment of said coupons, which payment was refused; that the amount demanded upon said coupons from the said International Trust Company and the said Guaranty Company at said time, and being all of the coupons attached to said bonds which were due and payable up to the 27th day of August, 1918, save and except always the coupons for the interest on approximately ninety thousand dollars of said bonds, for the first installment of interest thereon as hereinabove set forth, was the sum

of \$70,024.00, and that said interest as represented by said coupons to said amount was then due, owing and unpaid. That none of said interest coupons have been paid, and that no other interest or coupons subsequently maturing have been paid, and the whole thereof are now unpaid, together with the principal of said bonds, as aforesaid. (22)

VIII.

That the said demand was made as aforesaid for the payment of said coupons so not paid, and that default in the payment of said coupons and the whole thereof did continue for more than the space of sixty (60) days after said demand of payment, and that after the expiration of said period of sixty days the Trustee in said indenture of trust and your petitioner did notify the said Tucson Rapid Transit Company of such default and failure to pay said coupons, and that the said Rapid Transit Company after receipt of such notice and for more than the period of thirty (30) days thereafter, did default and continue to [67] default upon the payment of said interest coupons, and as aforesaid, has not paid the same, nor any part thereof.

IX.

That under and by virtue of the aforesaid indenture of trust, the complainant herein, as such trustee, has a first prior and paramount lien to secure the aforesaid indebtedness upon all the property, rights, assets, moneys and all property or property rights of whatsoever kind or description of the said Tucson Rapid Transit Company, which it now has

or may at any time have or possess, and that said complainant under and by virtue of said indenture of trust, has the right to have the funds now in the hands of the Receiver, and all funds that may come into his hands, over and above the necessary expenses of operation and the expenses of said receivership, paid upon the aforesaid indebtedness to it, that complainant has an equitable, first and prior lien upon all funds in the hands of said receiver derived from the operation of said property; and in order to preserve and protect the said property of the said mortgagor, has the right to have any of the property or assets of the said Tucson Rapid Transit Company that may be necessary used for the protection and preservation of said property as a whole That (23) (substituted May 17, or in part. 1920, C. R. McFall, Clerk), complainant is advised that one Asma Rubiaz has filed in this cause a complaint in intervention, wherein she, the said Asma Rubiaz, claims priority on a claim or alleged claim superior to the rights or liens of this complainant. That in fact, the said claim of the said Asma Rubiaz, as this complainant is advised and believes, and on such information, advice and belief avers, is inferior to the liens, rights and claims of the complainant herein.

WHEREFORE, complainant prays judgment:

(1) That the lien or liens of complainant, and under and by virtue of the said indenture of trust, be declared prior and superior to any and all other claims or liens of any person whomsoever upon all of the property, rights, moneys, franchises, profits,

income, and all property of whatsoever kind or description, of the said Tucson Rapid Transit Company, and that all [68] moneys that have been derived from the operation of the property, over and above the necessary expenses of operation and the expenses of the receivership, and that may hereafter be derived from said operation, be paid unto it to apply upon the aforesaid indebtedness, and that the Receiver hold all property of defendants for complainant.

That complainant do have such other and further relief as shall be adequate, and proper and just in the premises.

KINGAN & CAMPBELL,

Attorneys for Complainant and Intervenor. (Substituted, May 17, 1920. C. R. McFall, Clerk.) (24)

State of Arizona, County of Pima,—ss.

S. L. Kingan, being first duly sworn, deposes and says: That he is one of the attorneys for the complainant and intervenor, The International Trust Company; that he has read the above and foregoing petition, and knows the contents thereof, and that the same is true in substance and in fact, to the best of his knowledge and belief; that affiant makes this affidavit for and on behalf of the said complainant and intervenor, The International Trust Company, for the reason that the said company and its offices are without the State of Arizona.

S. L. KINGAN.

Subscribed and sworn to before me this 26th day of April, 1920.

[Notarial Seal] G. H. LANGWORTHY, Notary Public.

My commission expires Nov. 19, 1921. (24)

[Endorsed]: No. ——. In the United States District Court in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, v. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and The International Trust Company, a Corporation, Intervenors. Petition and Complaint in Intervention. Service admitted the 26th day of April, 1920. Richey & Richey, Moore & Frawley, Attys. for Asma Rubiaz, Intervenor. Edwin F. Jones, Receiver. Filed Apr. 26, 1920. C. R. Mc-Fall, Clerk. [69]

In the District Court of the United States in and for the District of Arizona.

E.—70.

THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,
Plaintiff,

vs.

THE TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ,

Intervenor.

Answer of the Tucson Gas, Electric Light & Power Company to the Complaint of Asma Rubiaz.

Comes now the plaintiff, The Tucson Gas, Electric Light & Power Company, ans answering the complaint of Asma Rubiaz, Intervenor, says:

I.

Plaintiff denies that by reason of Section 3634 of the Civil Code of the State of Arizona, 1913, or at all, the judgment obtained by the intervenor is a first lien on the personal property or any of the property of The Tucson Rapid Transit Company. and denies that such alleged lien is entitled to be foreclosed, and denies that the amount due on the aforesaid judgment should be paid by said receiver prior to any other claim mentioned in the petition or complaint of plaintiff herein, and in this behalf, plaintiff avers that the said judgment, so obtained, is not a first lien upon any of the property of the defendant, The Tucson Rapid Transit Company, and avers that, on the 15th day of March, 1906, the said Tucson Rapid Transit Company executed a deed of trust to the International Trust Company, and did deed and mortgage to said trustee, at said time, all of its property, real, personal and mixed, that it then had or might thereafter acquire or become possessed of; that said deed of trust was executed to secure the payment of certain bonds about to be issued, together with the interest upon the same; that (1) under and pursuant to the terms of said deed of trust, there was issued one hundred fourteen thousand eight hundred dollars [70]

(\$114,800.00) of said bonds, and that no other or further bonds were issued under said deed of trust; that the whole of said amount of bonds remains unpaid, and is now due and payable, as plaintiff is advised and believes; that none of the interest upon said bonds has been paid, save and except that plaintiff is advised, and on such information and belief avers, that the first installment of interest on ninety thousand dollars (\$90,000.00) of said bonds was paid, and that none of said interest, other than the said single payment of interest on approximately ninety thousand dollars of said bonds has been paid, and that the whole of said interest, with the exception aforesaid, is now due, owing and unpaid, and that said interest, now accrued and unpaid, amounts to upwards of the sum of, be it more or less, seventy-three thousand dollars (\$73,000.00); that the lien of said deed of trust is a first, prior and paramount lien upon all of the property, real, personal and mixed, money, franchises and all assets whatsoever, of the said The Tucson Rapid Transit Company, and is prior and superior to, upon the whole of the property of the said The Tucson Rapid Transit Company, the lien claimed by the intervenor herein. Further in this behalf, plaintiff avers that all of the money now in the hands of the receiver consists of earnings of the said Tucson Rapid Transit Company, during and within the period after said receiver was appointed, and that the said intervenor has no lien upon said money or any thereof; plaintiff denies that the sum of money now in the hands of the Receiver of the

Tucson Rapid Transit Company is not essential or necessary for the operation or management and expenses of the property of the Tucson Rapid Transit Company, and in this behalf avers that the franchise of the City of Tucson granted to the Tucson Rapid Transit Company requires said company, whenever (2) paving shall be ordered upon a street where the railroad of said company shall be operated, that said company shall pave between the rails on said street or streets, and that, in the event it shall fail so to do, its franchise shall be forfeited; that the City of Tucson has ordered that Stone Avenue, in the said City of Tucson from the railroad tracks of the Southern Pacific Company on said Stone Avenue, north to Third Street shall be paved, and that, as plaintiff is advised and believes, the contract [71] for the paving of said street has been let, and said paving is about to be commenced; that the said Tucson Rapid Transit Company and its receiver will be required, in order to protect the franchise of the said company, to pave between the rails of said railway, said portion of said street about to be paved; that the cost of said paving to be paid by the Tucson Rapid Transit Company will be, as plaintiff is informed and believes, approximately the sum of eight thousand dollars (\$8,-000.00); that it is essential that the said receiver pave said portion of said street in order to protect the bonds of the said Tucson Rapid Transit Company, and preserve the said franchise from forfeiture; that, should the receiver of The Tucson Rapid Transit Company, for any reason, fail or refuse, or be unable for lack of funds, to pave said street, and said franchise be forfeited, as under said franchise it may be forfeited, the assets of the said Tucson Rapid Transit Company will be practically destroyed, in that the said company's assets, which largely consist of its right to operate upon the streets of the City of Tucson, will be lost, and the creditors of the said Tucson Rapid Transit Company will be deprived of payment of their just claims; that the creditors of the said Tucson Rapid Transit Company have the right to have any and all funds now in the hands of the said receiver and earned by the said receiver from the operation of said property used for the preservation (3) and protection of said property, to the end that their security be not destroyed by forfeiture of the franchise of the said defendant company.

II.

Further answering, said plaintiff denies as afore-said, that the judgment of the said intervenor is a first and prior lien on the personal property, or any of the property of the said Tucson Rapid Transit Company, including the sum of money in the hands of the said receiver, and as aforesaid, avers that the lien of the said deed of trust is the first and prior lien upon all of the property and assets of whatsoever kind or character of the said Tucson Rapid Transit Company.

WHEREFORE, plaintiff prays that the intervenor do have [72] and recover nothing upon her complaint and petition in intervention; that the lien of the said International Trust Company be declared

the first and paramount lien upon all of the property and assets of the Tucson Rapid Transit Company; that, to the end that the creditors of The Tucson Rapid Transit Company may have their rights preserved in said property, that the receiver herein be authorized and directed to apply the moneys now in its hands to the necessary paving of, the aforesaid street that the franchise of the Tucson Rapid Transit Company be not forfeited and its assets preserved, and for such other and further relief as to the Court may seem meet and equitable in the premises.

KINGAN & CAMPBELL, Attorneys for Plaintiff. (4)

State of Arizona, County of Pima,—ss.

Frank E. Russell, being first duly sworn, deposes and says: That he is the general manager of the plaintiff herein; that he has read the above and foregoing answer and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters stated upon information and belief, and as to those that he believes it to be true.

FRANK E. RUSSELL

Subscribed and sworn to before me this 28th day of April, 1920.

[Notarial Seal] G. H. LANGWORTHY, Notary Public.

My commission expires Nov. 19, 1921. (5)

[Endorsed]: No. E.—70. In the District Court of the United States in and for the District of Arizona.

The Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. The Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz, Intervenor. Answer of The Tucson Gas, Electric Light & Power Company to the Complaint of Asma Rubiaz, Intervenor. Service admitted [73] this 28th day of April, 1920. Edwin F. Jones, Receiver. Moore & Frawley, Richey & Richey, Attys. for Intervenor. Geo. O. Hilzinger, Atty. for Deft. Filed Apr. 28, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. [74]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Answer of Receiver to Petition.

Comes now Edwin F. Jones, Receiver of the Tucson Rapid Transit Company, and for answer to said petition says:

I.

That he is not informed upon what date said Asma Rubaiz instituted suit in the Superior Court, nor is he informed as to the date upon which said judgment was entered.

II.

Receiver admits that since his appointment as such Receiver he has joined in an appeal by the Tucson Rapid Transit Company against the said judgment, and that said judgment has been duly affirmed by the Supreme Court of the State of Arizona.

III.

This Receiver admits that he now has on hand, as such Receiver, and on deposit in the Arizona National Bank in the City of Tucson, the sum of \$8,368.77, which said sum is derived from the operation of the property of the Tucson Rapid Transit Company under the orders of this Court.

IV.

This Receiver is not advised, and does not deem it his duty or privilege to decide whether the said judgment is a lien upon any of the property in his hands as such Receiver, or to what extent the same is a lien, and he submits to the Court that he is entitled to instructions from the Court in the matter, and he asks that the Court will herein determine whether or not any of the money in his hands is subject to said lien, and whether the same should be paid by him upon said judgment, and he asks the direction of the Court in that regard.

Respectfully submitted, EDWIN F. JONES,

Receiver, Tucson Rapid Transit Company, a Corporation. [75]

State of Arizona, County of Pima,—ss.

Edwin F. Jones, being first duly sworn, on oath says: that he is the Receiver of the Tucson *Rapid Company*, and that the facts stated in the above answer when made on his own knowledge are true, and those made on information and belief, he verily believes to be true.

EDWIN F. JONES.

Sworn to and subscribed before me this second day of April, 1920.

[Seal]

MAUDE I. BOWEN,

Notary Public.

My commission will expire September 26, 1920.

[Endorsement]: E.—70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant. Answer of Receiver to Petition. Filed Apr. 19, 1920. C. R. McFall, Clerk. [76]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ, and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Answer of Receiver to Complaint of International Trust Company in Intervention.

Comes now the Receiver and for answer to the complaint in intervention heretofore filed against him in this cause, and admits, denies and alleges as follows:

I.

He admits the allegations of paragraph one of said complaint.

II.

He admits the allegations of paragraph two of said complaint.

TTT.

He admits the allegations of paragraph three of said complaint.

IV.

Receiver is not informed as to the matters and

things alleged in the fourth paragraph of said complaint, and he neither admits nor denies the same, but demands strict proof thereof.

V.

As to paragraph five of said complaint, this Receiver says that he is not informed as to the legal effect of said mortgage, and does not deem it either his province or privilege to determine the rights of the various parties thereunder, and submits the matter to the Court for its decision, and asks that he be instructed as to his duty in the premises.

VI.

This Receiver is ignorant of the matters and things [77] alleged in the sixth and seventh paragraphs of said complaint, and neither admits, nor denies the same, but demands strict proof thereof.

VII.

As to the matters and things alleged in paragraph nine of said answer, this Receiver states that he is not informed as to the priority of payment claimed by said Asma Rubiaz under said judgment, and he states that the money in his hands was derived from the operation of the property covered by said mortgage, and is the entire proceeds of the operation after paying the actual expenses of maintaining and operating said railroad. That the money is deposited in his name as Receiver in the Arizona National Bank, there being now on deposit to his credit the sum of Eight Thousand Three Hundred Sixty-eight Dollars and Seventy-seven Cents (\$8,368.77). This Receiver alleges that the

City of Tucson has heretofore by proper ordinance. required the paving of Stone Avenue from the crossing of the Southern Pacific to Third Street, which will necessitate the paving of the roadbed and one foot on each side of the rails over said distance; that the contract for paving has been let by said city, and will soon be executed; that the paying of the railroad should be done at the same time: that the estimated cost of said paving is the sum of Ten Thousand Dollars (\$10,000.00): that under and by virtue of the franchise under which the Tucson Rapid Transit Company is operated, the City of Tucson has the right, at its option, to declare said franchise forfeited if the paving above set out is not done. This Receiver shows to the Court that he has no means of paving said roadbed than the money now in his hands, and submits that the said paving is necessary for the protection of said franchise, and for the protection and the security of said mortgage. (2) He submits to the Court the question whether or not the said money now in his hands as Receiver, or any thereof, should be used in the paving of said roadbed, and asks for directions of the Court in that regard.

VIII.

This Receiver informs the Court that said Asma Rubiaz [78] claims that her judgment is a prior and first lien upon the money in his hands, and said International Trust Company, on the contrary, claims that the said money in the hands of the

Receiver should be applied to the past due interest on their said mortgage, and he asks that the said Asma Rubiaz and the said International Trust Company, and all other parties in interest, be required to propound their claims in your Honorable Court, and that the Court determine all the respective rights and priorities of the parties to the moneys now in the hands of the Receiver, and this Receiver prays for such other, further and different orders as may be necessary to protect him in the discharge of his duties as such Receiver.

And having fully answered this petition, this Receiver prays to be hence dismissed.

EDWIN F. JONES, Receiver. (3)

[Endorsed]: E.—70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and the International Trust Company, a Corporation, Intervenors. Answer of Receiver to Complaint of International Trust Company, in Intervention. Filed Apr. 29, 1920. C. R. McFall, Clerk. Edwin F. Jones, Receiver. [79]

In the District Court of the United States, in and for the District of Arizona.

E.—70.

TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,
Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ,

Intervenor.

Answer of Tucson Rapid Transit Company to Complaint in Intervention.

Comes now Tucson Rapid Transit Company, a corporation, the defendant herein, and for answer to the complaint in intervention filed by said Asma Rubiaz, admits, alleges and denies as follows:

Admits that on or about the 10th day of January, 1918, and prior to this Honorable Court placing the property of this defendant into the control and possession of the Receiver, Edwin F. Jones, the said Asma Rubiaz instituted a suit in the Superior Court of the State of Arizona, in and for the County of Pima, on a claim of damages for personal injuries negligently inflicted on her by the said defendant.

Admits that thereafter on or about the 25th day of June 1918, and prior to the appointment of said Receiver, that said Asma Rubiaz recovered judgment in said Superior Court for the sum of Forty-five Hundred Dollars (\$4,500.00) and Fifty-two and Seventy-five Hundredths Dollars (\$52.75) costs, as more fully set out in Exhibit "A" of said Intervenor's petition.

Admits that thereafter the defendant and said Receiver appealed from said judgment to the Supreme Court of the State of Arizona, and that on or about the 2d day of February, 1920, said Supreme Court rendered its judgment affirming the said judgment of said Superior Court, and that thereafter on or about the 18th day of February, 1920, said Supreme Court issued its mandate and forwarded same to said Superior Court as more fully set forth in Exhibit "B" of said Intervenor's petition. [80]

Admits that no part or portion of said judgment has been paid, and admits that the same remains wholly unsatisfied, and denies that said judgment is a first lien on the property, personal or otherwise, of this defendant, and denies that said lien of judgment is entitled to be foreclosed and paid by the said Receiver prior to any other claim mentioned in plaintiff's bill of complaint.

Admits that the Receiver, Edwin F. Jones, has now in his hands as current receipts as the result

of managing and operating the properties of this defendant, amounting as it is informed and believes, to about Eight Thousand Dollars (\$8,000.00), but denies that the same is not essential or necessary for the operation and management expense of the property of the defendant, as hereinafter more fully set forth.

Admits that said Intervenor has demanded payment of said judgment, and that payment has been refused, and that there is now unpaid on said judgment the sum of Forty-five Hundred Fifty-two and Seventy-five Hundredths Dollars (\$4,552.75), with interest thereon from the 25th day of June, 1918, at the rate of six (6) per cent per annum, and the further sum of One Hundred Six Dollars (\$106.00) costs in said Supreme Court, together with interest thereon from the second day of February, 1920, at the rate of six (6) per cent per annum.

Denies that the said judgment of Intervenor, Asma Rubiaz, is a first and prior lien on the personal property of defendant, within the County of Pima, State of Arizona, including said sum of money in the hands of said Receiver, and in this connection alleges:

I.

That on or about the 15th day of March, 1906, this defendant executed and delivered a certain indenture and deed of trust to the International Trust Company, a corporation, organized and (2)

existing under the laws of the State of Colorado, and having its principal place of business in the City of Denver in said State, and did mortgage to said Trust Company at said time all of its property, real and personal and mixed, that it then had or might thereafter acquire, or become possessed of; that said deed of trust was executed to secure the payment of certain bonds about to be issued by defendant in the aggregate principal sum of Three Hundred Thousand Dollars (\$300,000), together with interest thereon at the rate of six (6) per cent per annum, payable semi-annually, and evidenced by coupons to be attached to said bonds, and that said bonds were payable twentytwo (22) years from their said date, to wit, the 15th day of March, 1906; that it was provided in said deed of trust that bonds thereunder in the aggregate amount of One Hundred Fifty Thousand Dollars (\$150,000) should be at once issued and certified; that the remainder should be issued and certified only after expenditures for new construction or new equipment all as provided in said deed of trust; that said instrument was executed on or about the 15th day of March, 1906, and on or about the 23d day of April, 1906, was duly recorded in the office of the County Recorder of Pima County, Arizona, in Book 21 of Mortgages, at page 229; that under said deed of trust, and out of the One Hundred Fifty Thousand Dollars (\$150,000) of bonds therein provided to be issued forthwith,

there were issued or certified and disposed of by said defendant, bonds aggregating the total amount of One Hundred Fourteen Thousand Eight Hundred (\$114,800.00); that since the year 1910 the defendant has not paid any interest upon said bonds, and that the whole of said interest from and after the year 1910 up to the present time is now unpaid and is due and owing unto the holders of said bonds, and that said interest now accrued, due, owing and unpaid amounts to upwards the sum of Seventy-five Thousand Dollars (\$75,000.00), payment of which has heretofore been demanded. (3)

II.

That for many years last past prior to the appointment of the Receiver herein the said defendant in the operation of said street railway line has been unable to earn its interest and operating charges, and has been insolvent. [82]

III.

That on or about the fourth day of September, 1918, the said deed of trust was duly filed in the office of said County Recorder of Pima County as a chattel mortgage.

IV.

That as appears from said indenture certain affidavits as to the good faith of said mortgage were not attached to the said original mortgage as so recorded, but were executed and attached to said mortgage on or about the 30th day of August, 1918, and were attached at or about the time that said indenture was filed as a chattle mortgage, and that said original mortgage as executed, delivered and accepted, did not contain said affidavits.

V.

That the whole of said amount of said bonds, to wit, \$114,800 par value thereof, are now outstanding and in the hands of purchasers thereof, or their assignees, and wholly unpaid. That defendant avers, of the said interest coupons attached to said bonds there was paid, on or about the 15th day of August, 1906, a portion of said coupons, to wit, the first interest coupon, of approximately ninety of said bonds were paid, and that the remainder of the coupons on said installment of interest, and being the first installment of interest, were not paid; that thereafter none of said interest coupons have ever been paid, no interest having been paid whatsoever on said bonds from the date of their issuance up to the present time, except as aforesaid, the interest on approximately ninety of said bonds, and being the first installment of interest due on said bonds, that (4) as aforesaid, the whole of said interest on said bonds from the date of their issuance, March, 1906, has not been paid in whole or in part, except for part of the said installment, as aforesaid, and that the whole thereof are now in the hands of the purchasers of said bonds or their assignees, and are wholly unpaid. That, as aforesaid, all of the \$114,800.00 of said bonds, so certified and delivered as aforesaid, are

now in the hands of the purchasers thereof or their assignees, and wholly unpaid. [83]

VI.

That after the execution of said indenture of trust and the due issuance of said bonds aforesaid thereunder, the Morton Trust Company of the city of New York, Trustee, was merged or taken over by the Guaranty Trust Company, of the said City of New York, the said Guaranty Trust Company being the successor of the said Morton Trust Company.

VII.

That on or about the 27th day of August, 1918, the owners and holders of approximately ninety per cent of the said outstanding bonds and interest coupons, presented the said coupons of the said bonds to the said International Trust Company, and to said Guaranty Trust Company of New York, for payment, and did at said time, and at the respective offices as aforesaid of said companies, demand payment of said company, which payment was refused; that the amount demanded upon said coupons from the said International Trust Company and the said Guaranty Company at said time, and being all of the coupons attached to said bonds which were due and payable up to the 27th day of August, 1918, save and except always the coupons for the interest on approximately ninety thousand dollars of said bonds, for the first installment of interest thereon as hereinabove set forth, was the sum of \$70,024.00, and that said interest as represented by said coupons to said amount was then due, owing and unpaid. That none of said interest coupons have been paid, and that no other in- (5) terest or coupons subsequently maturing have been paid, and the whole thereof are now unpaid, together with the principal of said bonds, as aforesaid.

VIII.

That the said demand was made as aforesaid for the payment of said coupons so not paid, and that default in the payment of said coupons and the whole thereof did continue for more than the space of sixty (60) days after said demand of payment, and that after the expiration of said period of sixty days the Trustee in said indenture of trust did notify the said Tucson Rapid Transit Company of such default and failure to pay said [84] coupons and that the said Rapid Transit Company after receipt of such notice and for more than the period of thirty (30) days thereafter did default and continue to default upon the payments of said interest coupons, and, as aforesaid, has not paid the same not any part thereof.

IX.

That under and by virtue of the aforesaid indenture of trust, the International Trust Company, as such trustee, has a first, prior and paramount lien to secure the aforesaid indebtedness upon all the property, rights, assets, moneys and all property

or property rights of whatsoever kind or description of the said Tucson Rapid Transit Company, which it now has or may at any time have or possess, and that said Trustee, under and by virtue of said indenture of trust, has the right, in order to preserve and protect the said property of the mortgagor, to have any of the property or assets of the said Tucson Rapid Transit Company that may be necessary used for the protection and preservation of said property as a whole or in part. That in fact the said claim of the said Asma Rubiaz as this defendant is advised and believes, and on such information, advice and belief avers, is inferior and secondary to the liens, rights and claims of the said Trustees. (6)

X.

That the city of Tucson, a municipal corporation, has heretofore by proper ordinance, required the paving of Stone Avenue from the crossing of the Southern Pacific Railroad tracks to Third Street in said city where defendant carries on its business as a public service corporation, running a street car line, which will necessitate the paving of the roadbed and one foot on each side of the rails over said distance; alleges that the contract for paving has been let by said city, and will soon be executed, and that the paving of the railroad should be done at the same time; alleges that estimated cost of said paving is about Ten Thousand Dollars (\$10,000), and that under and by virtue of the franchise under which the Tucson Rapid Transit Company

is operated, said City of Tucson has the right, at its [85] option, to declare said franchise forfeited if the paving above set out is not done; defendant alleges that it has no other means of paving said roadbed than the money now in the hands of the Receiver, and alleges that the said paving is necessary for the protection of said franchise, and for the protection and security of said mortgage.

WHEREFORE, defendant prays:

- 1. That the lien or liens of the International Trust Company, Trustee, under and by virtue of the said indenture of trust, be declared prior and superior to any and all other claims or liens of any person, and of the claim or lien of the said Asma Rubiaz upon all property, property rights, moneys, franchises, and all properties of whatsoever kind and description of the said defendant.
- 2. That the Court direct the money now in the hands of the Receiver to be spent for the purpose of doing said paving in order to improve the security of the said trustee.

GEORGE O. HILZINGER, Attorney for Defendant. (7)

State of Arizona, County of Pima,—ss.

Walter J. Bartlett, being first duly sworn, deposes and says that he is the auditor of the Tucson Rapid Transit Company, a corporation; that he has read the above and foregoing answer, and knows the contents thereof, and that the same is true in sub-

stance and in fact, to the best of his knowledge and belief, and that he makes this affidavit for and on behalf of the defendant corporation, and as such officer.

WALTER J. BARTLETT.

Subscribed and sworn to before me this 30th day of April, 1920.

[Seal]

MAUDE I. BOWEN,

Notary Public.

My commission will expire Sept. 26, 1920. (8)

[Endorsed]: In the District Court of the United States in and for the District of Arizona. Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz, Intervenor. Answer of Tucson Rapid Transit Company to Asma Rubiaz, Intervenor. E.–70. Service of copy of within answer acknowledged this 30th day of April, 1920. Moore & Frawley and Richey & Richey, Attys. for Asma Rubiaz. Filed Apr. 30, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. [86]

- In the District Court of the United States in and for the District of Arizona.
- TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation, Intervenors.

Notice of Motions.

- To THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, and Messrs. KINGAN & CAMPBELL, Its Attorneys.
- To TUCSON RAPID TRANSIT COMPANY and GEORGE O. HILZINGER, Its Attorney.
- To THE INTERNATIONAL TRUST COMPANY, and Messrs. KINGAN & CAMPBELL, Its Attorneys, and
- To EDWIN F. JONES, Receiver, Tucson, Arizona. You and each of you will please take notice that Intervenor Asma Rubaiz will on Monday, the 17th day of May, 1920, at 10 o'clock A. M. of said day,

or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled court in the city of Tucson, County of Pima, State of Arizona, before Hon. William H. Sawtelle, Judge of said aboveentitled court, present to said Court her motions as follows, to wit: (1)

Motion to dismiss the complaint in intervention of The International Trust Company, Intervenor above named;

Motion to strike out the answer of the Tucson Gas, Electric Light & Power Company, plaintiff above named, to the complaint in Intervention of the said Asma Rubaiz; and

Motion to strike out the answer of Tucson Rapid Transit Company, defendant above named, to the complaint in Intervention of the said Asma Rubiaz, copies of each of which said motions are hereto attached, and move the Court for an order dismissing said complaint in Intervention of said The International Trust Company, as to Intervenor, Asma Rubaiz; for an order striking out the answer of Tucson Rapid Transit Company to the complaint [87] in intervention of the said Asma Rubaiz as to Intervenor Asma Rubaiz and for an order striking out the answer of the Tucson Gas, Electric Light & Power Company, to the complaint in intervention of the said Asma Rubaiz, as to Intervenor Asma Rubaiz, each and all for want of equity and for failure to state any facts or grounds sufficient to entitle the said The International Trust Company to any priority or superiority of its lien over the lien of

the said Asma Rubaiz, on the money and other personal property of Tucson Rapid Transit Company now in the hands of the Receiver, and for an order or orders for such other and further relief in the premises as may be just and equitable; and will in the presentation of said motions direct the Court's attention to the apparent collusion of plaintiff, defendant and intervenor, The International Trust Company, to keep the moneys and other personal property of The Tucson Rapid Transit Company now in the hands of the Receiver from the said intervenor, Asma Rubaiz, and to apply said money and other personal property to the enhancement and improvement of the security of the mortgage of said The International Trust Company alone. (2)

You will further please take notice that Intervenor Asma Rubaiz hereby specifies the following as the documents to be used by her in support of said Motions and each of them, to wit:

The complaint of plaintiff;

The answer of defendant;

The complaint in intervention of Asma Rubaiz; The answer of Tucson Rapid Transit Company to the complaint in intervention of Asma Rubaiz;

The answer of the Tucson Gas, Electric Light & Power Company to the complaint in intervention of Asma Rubaiz;

The complaint in intervention of the International Trust Company;

The answer of the Receiver to the complaint in intervention of Asma Rubaiz;

The answer of the Receiver to the complaint in intervention of the International Trust Company; [88]

The various reports of the Receiver to the Court; and

The order of the Court appointing the Receiver;
—all being the pleadings, papers, documents and reports in the above-entitled suit.

Dated, Tucson, Arizona, May 10th, 1920.

MOORE & FRAWLEY, RICHEY & RICHEY,

Attorneys for Intervenor, Asma Rubaiz. (3)

[Endorsed]: E.-70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubaiz and The International Trust Company, a Corporation, Intervenors. Notice of Motions. Filed May 11, 1920, C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Richey & Richey, Attorneys for Intervenor Asma Rubaiz. [89]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Acknowledgment of Service of Motions.

Received copies of each of the following motions, to wit: Motion of Intervenor Asma Rubaiz to dismiss complaint of The International Trust Company; motion of Intervenor Asma Rubaiz to strike out answer of Tucson Rapid Transit Company to her complaint in intervention; motion of Intervenor Asma Rubaiz to strike out answer of the Tucson Gas, Electric Light & Power Company to her complaint in intervention; this 10th day of May, 1920, and notice that they will be called for hearing on Monday, May 17th, 1920, at the hour of 10 o'clock

A. M. of said day, or as soon thereafter as same may be heard.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY,

By KINGAN & CAMPBELL,

Its Attorneys.

TUCSON RAPID TRANSIT COMPANY, By GEO. O. HILZINGER,

Its Attorney.

THE INTERNATIONAL TRUST COM-PANY,

By KINGAN & CAMPBELL,

Its Attorneys.

EDWIN F. JONES,

Receiver.

[Endorsed]: E.-70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas. Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubaiz and The International Trust Company, a Corporation, Intervenors. Acknowledgment of Service. Filed May 11, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. [90]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Motion of Intervenor Asma Rubaiz to Dismiss Complaint of the International Trust Company.

Now comes Intervenor Asma Rubaiz and makes and files this her motion to dismiss the complaint of The International Trust Company, intervenor in the above-entitled cause, for reasons as follows:

1. Because said complaint does not state facts or grounds sufficient to constitute or entitle said. The International Trust Company to a valid or any priority or superiority of its mortgage lien over the judgment lien of your petitioner on the money or other personal property of the Tucson Rapid Transit Company, defendant above named, now in the hands of the Receiver in this action.

- 2. Because said complaint does not state any facts or grounds sufficient to entitle said The International Trust Company to any equitable relief whatever as against or involving the money or other personal property of the Tucson Rapid Transit Company, defendant herein, now in the hands of the Receiver herein as against the lien of Intervenor Asma Rubaiz. (1)
- 3. Because said complaint shows on its face that said The International Trust Company is seeking the sole relief "to have any of the property or assets of the said Tucson Rapid Transit Company that may be necessary used for the protection and preservation of said property as a whole or in part," to secure the indebtedness under its mortgage, and not the relief of payment or the application of money in the hands of the Receiver or current income or the proceeds of foreclosure and sale of the property of Tucson Rapid Transit Company in the hands [91] of the Receiver, to the claim of said The International Trust Company.

WHEREFORE, your petitioner prays that said complaint of The International Trust Company be dismissed as to Intervenor Asma Rubaiz, and for such other and further relief in the premises as may be just and equitable.

MOORE & FRAWLEY, RICHEY & RICHEY,

Attorneys for Intervenor, Asma Rubaiz.

State of Arizona, County of Pima,—ss.

Asma Rubaiz, being first duly sworn, deposes and says: That she is the petitioner herein; that she has read the above and foregoing motion and knows the contents thereof, and that the same is true in substance and in fact, to the best of her knowledge and belief.

ASMA RUBAIZ.

Subscribed and sworn to before me this 10th day of May, 1920.

[Seal]

A. T. SMITH,
Notary Public.

My commission expires May 12, 1920.

[Endorsed]: E.-70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubaiz and The International Trust Company, a Corporation, Intervenors. Motion of Intervenor Asma Rubaiz to Dismiss Complaint of The International Trust Company. Filed May 11, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Richey & Richey, Attorneys for Intervenor, Asma Rubaiz. [92]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,
Intervenors.

Motion of Intervenor Asma Rubaiz to Strike Out Answer of Tucson Rapid Transit Company to Her Complaint in Intervention.

Comes now Intervenor Asma Rubaiz and makes and files this her motion to strike out the answer of Tucson Rapid Transit Company to her complaint in intervention in the above-entitled cause for reasons as follows:

1. Because said answer does not state any facts or grounds sufficient to constitute or entitle The International Trust Company, an intervenor herein, to a valid or any priority or superiority of its mortgage lien over the judgment lien of your petitioner on the money or other personal property of the

Tucson Rapid Transit Company, defendant above named, now in the hands of the Receiver in this action.

- 2. Because said answer does not state any facts or grounds sufficient to entitle said The International Trust Company to any equitable relief whatever as against or involving the money or other personal property of the Tucson Rapid Transit Company, (1) defendant herein, now in the hands of the Receiver herein, as against the lien of Intervenor Asma Rubaiz.
- 3. Because said answer shows on its face that said Tucson Rapid Transit Company is colluding with said The International Trust Company, intervenor, and Tucson Gas, Electric Light and Power Company, plaintiff above named, "to have any of the property or assets of the said Tucson Rapid Transit Company that may be necessary used for the protection and preservation of said property in whole or in part" to secure to said The International Trust Company its indebtedness under the [93] mortgage of said Tucson Rapid Transit Company to said The International Trust Company, and to defeat the claim and lien of Intervenor Asma Rubaiz, and to divert the moneys belonging to said Tucson Rapid Transit Company now in the hands of the Receiver in this action, from the claim and lien of the said Intervenor Asma Rubaiz, to the protection of the mortgage of said The International Trust Company by applying same to the

"paving in order to improve the security of the said Trustee," The International Trust Company.

WHEREFORE, your petitioner, Asma Rubaiz, prays that said answer of Tucson Rapid Transit Company to the complaint in intervention of your petitioner be stricken out as to Intervenor Asma Rubaiz, and for such other and further relief in the premises as may be just and equitable.

MOORE & FRAWLEY, RICHEY & RICHEY,

Attorneys for Intervenor, Asma Rubaiz. (2)

State of Arizona, County of Pima,—ss.

Asma Rubaiz, being first duly sworn, deposes and says: That she is the petitioner herein; that she has read the above and foregoing motion and knows the contents thereof, and that the same is true in substance and in fact, to the best of her knowledge and belief.

ASMA RUBAIZ.

Subscribed and sworn to before me this 10th day of May, 1920.

[Seal]

A. T. SMITH,

Notary Public.

My commission expires May 12, 1920.

[Endorsed]: E.-70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit

Company, a Corporation, Defendant, and Asma Rubaiz and The International Trust Company, a Corporation, Intervenors. Motion of Intervenor Asma Rubaiz to Strike Out Answer of Tucson Rapid Transit Company to Her Complaint in Intervention. Filed May 11, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Richey & Richey, Attorneys for Intervenor, Asma Rubaiz. [94]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,
Intervenors.

Motion of Intervenor Asma Rubaiz to Strike Out Answer of the Tucson Gas, Electric Light & Power Company to Her Complaint in Intervention.

Comes now intervenor, Asma Rubaiz, and makes

and files this her motion to strike out the answer of the Tucson Gas, Electric Light & Power Company to her complaint in intervention in the above-entitled cause for reasons as follows:

- 1. Because said answer does not state any facts or grounds sufficient to constitute or entitle The International Trust Company, an intervenor herein, to a valid or any priority or superiority of its mortgage lien over the judgment lien of your petitioner on the money and other personal property of the Tucson Rapid Transit Company, defendant above named, now in the hands of the Receiver in this action.
- 2. Because said answer does not state any facts or grounds sufficient to entitle said The International Trust Company to any equitable relief whatever as against or involving the money or other personal property of the Tucson Rapid Transit Company, defendant herein, now in the hands of the Receiver herein, as against the lien of Intervenor Asma Rubaiz. (1)
- 3. Because said answer shows on its face that said The Tucson Gas, Electric Light & Power Company is colluding with the said The International Trust Company, intervenor, and Tucson Rapid Transit Company, defendant above named, to have the property and assets of said Tucson Rapid Transit Company used for the protection, preservation and enhancement of the value of the security of the mortgage of the said The International Trust

[95] Company, and to defeat the claim and lien of Intervenor Asma Rubaiz, and to divert the moneys belonging to said Tucson Rapid Transit Company now in the hands of the Receiver in this action, from the claim and lien of the said Intervenor Asma Rubaiz, to "pave said portion of said street in order to protect the bonds of the said Tucson Rapid Transit Company and preserve the said franchise from forfeiture," to the sole end that the security of the mortgage of the said The International Trust Company may be increased.

WHEREFORE, your petitioner, Asma Rubaiz, prays that said answer of the Tucson Gas, Electric Light & Power Company to the complaint in intervention of your petitioner be stricken out as to Intervenor Asma Rubaiz, and for such other and further relief in the premises as may be just and equitable.

MOORE & FRAWLEY, RICHEY & RICHEY,

Attorneys for Intervenor Asma Rubaiz.

State of Arizona, County of Pima,—ss.

Asma Rubaiz, being first duly sworn, deposes and says: That she is the petitioner herein; that she has read the above and foregoing motion and knows the contents thereof, and that the same is true in substance and in fact, to the best of her knowledge and belief.

Subscribed and sworn to before me this 10th day of May, 1920.

[Seal]

A. T. SMITH,

Notary Public.

My commission expires May 12, 1920.

[Endorsed]: E.-70. In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubaiz and the International Trust Company, a Corporation, Intervenors. Motion of Intervenor Asma Rubaiz to Strike Out Answer of the Tucson Gas, Electric Light & Power Company to Her Complaint in Intervention. Filed May 11, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Richey & Richey, Attorneys for Intervenor Asma Rubaiz. [96]

In the District Court of the State of Arizona, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

Report of Receiver.

The undersigned hereby files his report showing the operations of the property of the Tucson Rapid Transit Company under his receivership, to the first day of May, 1920.

During the year 1919 the gross receipts from the property amounted to the sum of \$34,597, and in the four months of the year 1920 the gross receipts have been \$14,274.95 as against \$10,515.86, being an increase of \$3,759.09 or 35.7 per cent increase, thus showing total receipts of \$48,871.

The Receiver had on hand in cash on the first day of May, 1920, deposited in the Arizona National Bank to his credit, \$9,467.19. All taxes and other fixed charges against the property, excepting interest on the bonds, have been paid. During the month of April, 1920, the gross receipts of the Company amounted to \$3,917.90 compared with \$3,000.32 for the similar month last year, being an increase of \$917.58, or 30.6 per cent. The operating expenses during the month of April have been \$2,501.18 as against \$2,469.31 for the similar month of last year, being an increase of \$31.87 or 1.3 per cent. The net earnings of the Company have been \$1,416.72 as against \$531.01 for the same month of last year, an increase of \$885.71 or 166.8 per cent.

The net income of the property for the month of April will be sufficient to pay the interest on bonds, amounting to \$574 and the interest on notes,

amounting to \$400, being a total of \$974, and leave a net revenue of \$442.72. This is the first month that the property has in fact earned a surplus over and above its fixed expenses and charges.

There were carried, during the month of April, 51,531 [97] revenue passengers against 39,549 for the previous year. The number of car miles operated in April, 1920, was 12,122 and in April, 1919, 12,052. The number of cars operated was the same; five in each month. The total consumption of electricity during the month was 14,510 kilowatt hours in 1920, as against 14,850 in the similar month of 1919.

It is becoming more evident that the public has become reconciled to the increase in fare from five to eight cents.

On the first day of April, 1920, Asma Rubiaz filed her petition for leave to intervene in said cause, and on the 20th day of April, 1920, her petition was granted, and on the 27th day of April, 1920, the trustees for the bondholders filed their petition in intervention. The amount of cash on hand, in the possession of the receiver on the first day of April, 1920, was \$8,368.77, but there were taxes which had to be paid during the month of April, of \$637.40.

The physical condition of the company and its plant is good; its property has been kept in good repair; the operating force has performed its duty with care and faithfulness. The Receiver again calls the attention of the Court to the fact that

paving has been ordered by the City Council from the crossing of the S. P. road on Stone Avenue north along Stone Avenue to Third Street, and the paving is now in process of being laid. The company will be compelled to pave its track and a foot on each side of its rails during this distance, or its franchise may, at the option of the City Council, be declared forfeit. (2) The estimated expense of this paving will be \$9,800, and the Receiver requests the instructions of the Court, whether he shall be allowed to use any, and if so, what amount, of the funds now in his hands for the purpose of doing said paving. The money in the hands of the Receiver is claimed by Asma Rubiaz to be subject to the payment of her judgment, which amounts to about \$5,000, with interest and costs to date. The Trustees for the bondholders also claim that they have a first and prior lien upon all the assets now in the hands of the Receiver, and that the income should be applied to the payment of interest upon their [98] lien. The Tucson Gas, Electric Light and Power Company claims that by the filing of the bill in this cause, under which this Receiver was appointed, they thereby acquire an equitable levy upon the income of said property, and that the net income thereof should be paid to it upon this debt. The Receiver does not feel that it is either his province or privilege to determine the priorities of the various parties to the funds in his hands, and he submits the matter to the Court, with the prayer

that the Court instruct him, to whom, and in what amounts said money shall be paid out.

Respectfully submitted,

EDWIN F. JONES,

Receiver, Tucson Rapid Transit Company, a Corporation.

[Endorsed]: In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant. Report of Receiver. E.–70, Tucson. Filed May 24, 1920. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. [99]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY, a Corporation,
Plaintiff.

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ,

Intervenor.

Order to Receiver to Make Partial Payment of Claim of Asma Rubaiz.

IT IS HEREBY ORDERED that the Receiver herein be and he is hereby authorized to pay out of the funds now in his hands the sum of Nine Hundred Sixty and 05/100 Dollars (\$960.05) to Asma Rubaiz, to apply on her judgment in claim before this court in this cause, said sumbeing the net amount received by him from the operation of the street railway now in his hands under the order of the Court herein, from April 1st to April 27th, 1920, inclusive, after operating expenses and fees of the Receiver for said time have been paid.

Further action of the Court on the matter of the Rubaiz claim in this cause will be taken under advisement.

Dated at Tucson, Arizona, this 24th day of June, 1920.

WM. H. SAWTELLE, District Judge.

[Endorsed]: In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light and Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubaiz, Intervenor. Order to Receiver to Make Partial Payment on Claim of Asma Rubaiz. E.—70. Copy received this 23d day of June, 1920. Geo. O. Hil-

zinger, Atty. for Tucson Rapid Tr. Co. Copy received this 23d June. Edwin F. Jones, Rec. Kingan & Campbell, Attys. for Internat'l Trust Co. & Tucson Gas, E. L. & P. Co. Filed June 24, 1920. C. R. McFall, Clerk. [100]

In the District Court for the United States for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff.

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Report of Receiver.

To the Honorable WILLIAM H. SAWTELLE, Judge:

The undersigned begs leave to submit the following report concerning the operations of the property of the Tucson Rapid Transit Company:

I enclose herewith itemized statement of the operations of the company for the month of February, 1921. The statement for the month of March will not be available until the 10th of April, when the payrolls and overhead will have been checked and a balance struck, at which time it will be filed.

There is on deposit to my credit as Receiver on the third day of April, 1921, the sum of \$11,756.19. This sum represents the entire receipts of the company, less its absolute running expenses, since the property has been in the hands of the Court. The Receiver in this case was appointed on the 22d day of February, 1919, consequently two years have elapsed up to the date of the report.

The general situation of the business is that for about eight months in the year there is a small balance varying from one to three hundred dollars per month and during the summer months of June, July and August, owing to the fact that the University is not then in operation, always shows a loss. The physical property of the company has been kept in fair repair, although the effect of wear is indisputable upon the rolling stock. The high price of material and labor has made it very difficult to operate the system at any profit, but materials are at last slowly declining [101] and I hope that the future will show better results.

On December fifth there was served upon the company by the City Clerk a notice, a copy of which is hereto annexed.

In compliance with that notice I personally appeared before the City Council and explained to them the situation. They took the matter under advisement, and on the 10th of December I wrote to the City Clerk a letter, a copy of which is also hereto annexed. Since that time the Council then in office

has given place to a new Council, on January first, and the city authorities have taken no further active steps to force the paving on North Stone Avenue.

If it be determined that the company must pave North Stone Avenue, it will very near, if not completely, exhaust the amount now on hand, as this portion of the road contains the passing switch which will necessitate some special steel work which is very expensive. I am now engaged in having the width of North Sixth Avenue on Third Street paved, so that the crossing there may be free from objection: also the curve at the intersection of Stone Avenue and Third Street, and the spur-track from our line into the car-barn on North Stone Avenue are being paved, and I propose to take out the cement the width of Sixth Avenue on Congress Street, which has shown decided signs of wear, and either replace it with new cement or bithulithic top. The paving of this Sixth Avenue crossing and this curve will, to a large extent, obviate any objection which might be reasonably urged against the condition of the track. As I stated in my letter to Judge Cowan, in December, I have no desire to evade or refuse any necessary repairs to make the street railroad safe and unobjectionable to the public.

A detailed statement of the operations during the

month of March will be filed in court on the tenth of this month.

Respectfully submitted, EDWIN F. JONES,

Receiver, Tucson Rapid Transit Company (2) [102]

CITY OF TUCSON, Pima County, Arizona. City Hall.

December 4th, 1920.

Tucson Rapid Transit Company,

Tucson, Arizona.

Gentlemen:

Pursuant to an order made by the Mayor and Common Council of the City of Tucson on the first day of December, 1920, you are hereby notified to pave the street between the rails thereof, and for one foot on each side of such rails on North Stone Avenue and Third Street, so that the grade of said street may be uniform with the paving recently done from the Southern Pacific Company right of way on Stone Avenue to Third Street.

This notice is given you in pursuance to Ordinance No. 203 of the ordinances of the Mayor and Common Council of the City of Tucson.

An immediate reply to this communication is required.

Respectfully,
L. O. COWAN,
City Clerk. [103]

Tucson, Arizona, December 10, 1920.

Hon. L. O. Cowan,

City Clerk,

Tucson, Arizona.

Dear Sir:

This is to acknowledge receipt of your notice of December 4, 1920, addressed to the Tucson Rapid Transit Company.

I wish to call your attention to the fact that your letter recites that the notice therein contained is given under and in pursuance of Ordinance 203 of the City Council.

This ordinance is not now in force, and the Tucson Rapid Transit Company is not operating its line under this ordinance, but under the amended ordinance passed in 1913 or 14.

I further desire to state in addition to the statement made at the last meeting of the council, that the property of which I am the Receiver, is in the hands of the Federal Court, and that I can take no action which I might wish to take in regard to it without first obtaining the approval of the Judge of that Court. Judge Sawtelle is now engaged in holding Court in Phoenix, and will not finish his work there until just before Christmas, and I do not think will hold any Court here until after the first of the year, and I respectfully ask that no action be taken until I can submit the whole situation to him upon his return here, and have the benefit of his

direction and advice in my efforts to meet the requirements of the Council.

I can assure the Council that I have no desire to evade paving the street, and I would have done so before I had had the means with which to do it, and I shall use every endeavor to obtain the necessary funds to make this needed improvement, but candor with the Council compels me to say that I now do not see where I am to obtain the means to do it, and I trust the Council can see its way to defer action until matters are a little clearer.

Yours very truly,

(Signed) EDWIN F. JONES, Receiver, Tucson Rapid Transit.

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	3, 1921	Per Unit	Current Month	% This Year			11.5				11.5			4.9				4.9			83.0
	Feb. 28, 1921		Increase	Amount			785 02				785 02			306 86				306 86			478 16
				This Year Last Year			06 962 9				06 962 9			6 221 17				6 221 17			575 73
ND LOSS	2 0			This Year			7 581 92				7 581 92			6 528 03				6 528 03			1 053 89
ROFIT A	RIMENT	/20		%	2		10.8				10.8			5.0				5.0			112.8
STATEMENT OF PROFIT AND LOSS	ALL DEPARTMENTS	2 Months from 12/31/20	Increase	Amount			355 73				355 73			155 16				155 16			200 57
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	T CO.	ıary		Last Year			3 660 52				3 660 52			3 282 11				3 282 11			378 41
		Month of February		This Year	GROSS EARNINGS	Electric Department	Railway Department	Gas Department	Ice Department	Water Department	Total Gross Earnings	OPERATING EXPENSES	Electric Department	Railway Department	Gas Department	Ice Department	Water Department	Total Oper. Expenses	NET EARNINGS	Electric Department	Railway Department

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Ice Department Water Department Total Net Earnings	INTEREST CHARGES Interest on Bonds

EARNINGS AND EXPENSES

February 28, 1921.

Increase 785 02 This Year Last Year 6 755 24 2 Months from 12/31/20 7 540 26 This Year Per Last Year Per Increase 355 73 RAILWAY DEPARTMENT Car M. 3 283 96 Month of February Car M. 3 636 69 TUCSON RAPID TRANSIT COMPANY REVENUE TRANSPORTATION Special Car, E c. GROSS EARNINGS Passenger Baggage

TOTAL REVENUE, TRANSPORTATION 3 639 69

Miscellaneous Transportation

Switching

Freight Milk

Express

Mail

785.02

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	Increase											785 02		327 41	793 34			83 14	488 22	564 15	306 86	478 16	[106]
12/31/20	Last Year	41 66									41 66	6 796 90		505 28	594 17			973 83	1 731 33	2 416 56	6 221 17	575 73	91.5
2 Months from 12/31/20	This Year	41 66									41 66	7 581 92		177 87	1 387 51			69 068	2 219 55	1 852 41	6 528 03	1 053 89	86 1
61	Increase		-									355 73	136 86	136 86	469 89			78 22	261 28	360 93	155 16	200 57	
Month of February	Per Last Year Per Increase Car M	20 83									20 83	3 304 79		233 71	351 25			460 95	849 75	1 231 29	3 126 95	177 84	94.6
	This Year	20 83									20 83	3 660 52		96 85	821 14			382 73	1 111 03	870 36	3 282 11	378 41	89.7%
	REVENUE, NON-TRANSPORTATION	Station and Car Privileges Pareel-Room	Storage	Car Service	Telephone and Telegraph Service	Rents of Tracks, Etc.	Rents of Equipment	Rents of Buildings, Etc.	Power	Miscellaneous	TOTAL REVENUE, NON-TRANSPOR'N	GROSS EARNINGS	OPERATING EXPENSES	Maintenance Way and Structure	Maintenance Equipment	Traffic Expenses	Superintendence Transportation	Power	Operation of Cars	General Expenses	TOTAL OPERATING EXPENSES	NET EARNINGS FROM OPERATION	Operating Ratio

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OPERATING EXPENSES	RAILWAY DEPARTMENT	MO THEORY

080114	TRANSIT COMPANY	OPER RAIL MO	OPERATING EXPENSES RAILWAY DEPARTMENT MONTH OF		February 2 MONTHS FROM	February 28, 1921. HS FROM	1
ACCT.		his Year F	This Year Per Last Year Per Increase Car M.	nerease	This Year	Last Year	Increase
	MAINTENANCE WAY AND STRUCTURES						
R 1	Superintendence Maintenance, Roadway and Track	90 62	233 71	154 65	147 68	494 46	346 78
R 3	Removal Snow, Ice and Sand						
R 4	Other Maintenance of Way					1 66	1 66
R 5	Poles and Fixtures						
R 6	Underground Conduits						
R 7	Transmission System	1		17 70	30 19	9 16	21 03
R 8		17 79		61	3		
R 9	Miscellaneous Electric Line Ex-						
	penses						
R 10	Buildings and Structures						
R 12	Other Operations, Dr.						
R 13			600	126.86	177 87	505 28	327 41
	TOTAL Maint. Way & Structures	96 85	235 (1	2000	; •		

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	Increase				1	302 56	9	490 78				793 34														83 14	83 14	83 14
ROM	Last Year					352 10	!	242 07				594 17														973 83	973 83	973 83
MONTHS FROM	This Year					654 66		732 85				1 387 51														890 68	69 068	69 068
+	er Increase M.					82 28		384 11				469 89														78 22	78 22	78 22
MONTH OF	This Year Per Last Year Per Increase Car M. Car M.					254 55		96 70				351 25														460 95	460 95	460 95
MO	This Year + Ca					340 33		480 81				821 14														382 73	382 73	382 73
		MAINTENANCE EQUIPMENT	Superintendence	Power-Plant Equipment	Sub-Station Equipment	Maintenance, Cars and Locomotives	Maintenance, Electric Equipment	of Cars and Locomotives	Miscellaneous Equipment Expenses	Other Operations, Dr.	Other Operations, Cr.	TOTAL Maintenance Equipment	TRAFFIC EXPENSES	CONDUCTING TRANSPORTATION	SUPERINTENDENCE	POWER	Power-Plant Employees	Sub-Station Employees	Fuel	Water		Miscellaneous Supplies and Ex-	penses	Sub-Station Supplies and Expenses	Power Purchased from	The Tucson G. E. L&P Co.	TOTAL POWER	AMOUNT FORWARD
	ACCT.		R 14	R 15	R 16	R 17	R 18		R 19	R 21	R 22		R 23	Ĭ	R 24		R 25	R 26	R 27	R 28	R 29	R 30		R 31	R 32			[107]

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1	O	v

Asma Rubaiz vs.

			Increase				83 44			407 08				37 65		43 49							488 22	405 08
	February 28, 1921.	ROM	Last Year				973 83			1 058 23				507 84		165 26							1,731 33	2 705 16
	Febru	MONTHS FROM	This Year				69 068			1 465 31				545 49		208 75							2 219 55	3 110 24
SES	IENT		er Increase	Car M.			78 22			183 51				43 40		34 37							261 28	183 06
OPERATING EXPENSES	RAILWAY DEPARTMENT		This Year Per Last Year Per Increase	Car M. Ca			460 95			511 75				251 27		86 73							849 75	1 310 70
OPEF		MONTH OF	This Year P	Ca.			382 73			695 26				294 67		s 121 10							1 03	1 493 76
	TUCSON RAPID TRANSIT COMPANY		£i.		CONDUCTING TRANSPORTATION	-Contd	AMOUNT BROUGHT FORWARD	OPERATION OF CARS	Passenger Conductors,	Motormen and Trainmen	Freight and Express Conductors,	Motormen and Trainmen	Miscellaneous Car Service	Employees and Expenses	Station Employees and Expenses	Car House Employees and Expenses	Signal, Interlocking,	Telegraph and Telephone System	Freight and Express Collection	and Delivery	Loss and Damage	Other Transportation Expenses	TOTAL OPERATION OF CARSI 111 03	TOTAL Conducting Transpor'n 1 493 76
	TUCS		ACCT.	No.					R36		R37		R38		R39	R40	R41		R42		R43	R44		

				7	rh	e I	Ги	cs	on	G	as	et	c.	$C\epsilon$	0.	et	al	•			1	61	
Increase		38 32		23 00		1 16	450 00	61 88	40 00					1 356 39		2 00	230 24			19 44	44 40		564 15
ROM Last Year		140 02		72 48		2 38	16 66	3 62	40 00					1 670 91		12 52	72 59			75 00	86 38	250 00	2 416 56
MONTHS FROM This Year La		178 34		95 48		1 22	466 66	65 50						314 52		17 52	302 83			55 56	104 78	250 00	1 852 41
Per Increase ar M.		19 16		11 50		2 04	150 00	60 38	20 00					678 06		2 50	70 65		-	2 78	22 20		360 93
MONTH OF Per Last Year Per Car M.		70 01		36 24		2 38	8 33	37	20 00					834 92		92 9	72 59			25 00	30 19	125 00	1 231 29
This Year		89 17		47 74		34	158 33	60 75						156 86		8 76	143 24			27 78	52 39	125 00	870 36
ENERAL, EXPENSES	Salaries and Expenses of Gen'l	Officers	Salaries & Exp. of Gen'l Office	Clerks	General Office Supplies and Ex-	penses	Law Expenses	Miscellaneous General Expenses	Auditing Expenses	Rate Case Expenses	Inventory Shrinkage	Other Operations, Dr.	Other Operations, Cr.	Injuries and Damages	Stationery and Printing	Store Expenses	Garage and Stable Expenses	Rent of Tracks and Terminals	Rent of Equipment	Rent	Insurance	Taxes	TOTAL GENERAL EXPENSES
ACCT. No.	R50		R51		R52		R53	R54	R54a	R54b	R54c	R55	R56	R57	R58	R59	R60	R67	R68	R61	R62	R63	T [108]

TUCSON RAPID TRANSIT COMPANY

BALANCE SHEET

Feb. 28, 1921.

ASSETS

AMOUNT TOTAL

INVESTMENTS:

PLANT, PROPERTY, ETC.:

Balance December 31, 1920

688 733 59

Additions Current year

Electric Construction

Railway Construction

77 26

Gas Construction

TOTAL ADDITIONS CURRENT

VEAR.

77 26

TOTAL PLANT, PROPERTY,

ETC .:

688 810 85

INVESTMENTS IN AFFILIATED COM-

PANIES:

OTHER INVESTMENTS

TOTAL INVESTMENTS,

CURRENT ASSETS:

Cash, Petty

25 00

Cash, General

4 220 02

Notes Receivable

Accounts Receivable, Customers Current

Month

Accounts Receivable, Customers Pre-

vious Months

Accounts Receivable, Miscellaneous (Ex-

Allied Cos.)

24 09

Fuel

Supplies

3 497 40

Apparatus Rented or Loaned

Coke, Tar, Etc.

Accrued Interest Receivable

The International Trust Co., Trustee

200 00

TOTAL CURRENT ASSETS,

7 966 51

ALLIED COMPANIES (NOTES AND AC-COUNTS):

Federal Light & Traction Company

TOTAL NOTES AND AC-COUNTS RECEIVABLE, AL-LIED COS.

UNADJUSTED DEBITS:

Insurance Premiums Paid in Advance

Taxes, Rents or Interest Paid in Ad-

vance

62 66

Cost of Signs

62 66

Deficit 12/31/20

83 870 76

Deficit as per Statement of Profit & Loss 894 11

TOTAL DEFICIT

84 764 87

TOTAL UNADJUSTED DEBITS

GRAND TOTAL

781 604 89

[109]

TUCSON RAPID TRANSIT COMPANY BALANCE SHEET

February 28, 1921.

CAPITAL STOCK, LIABILITIES AND

SURPLUS

AMOUNT

TOTAL

CAPITAL STOCK OUTSTANDING:

Preferred

Common

500 000 00

TOTAL CAPITAL STOCK OUT-

STANDING

500 000 00

LONG TERM DEBT

Funded Debt Unmatured

1st Mortgage Bonds Dated 3/15/06 114 800 00

Non-negotiable Debt to Affiliated Cos.

Demand Notes Payable to The Tucson

Gas, El. Lt. & Pr. Co.

60 000 00

TOTAL LONG TERM DEBT,

174 800 00

CURRENT LIABILITIES:			
Accounts Payable (Ex. to Allied Cos.)	74	0:09	
Pay Roll	71	2 42	
Meter Deposits			
Conductors Deposits	5	7 00	
Contract Deposits			
Tickets Outstanding	3	5 24	
Unclaimed Wages	,	7 17	
TOTAL CURRENT LIABILITIES,			1 552 92
ALLIED COMPANIES (ACCOUNTS PAY-			1 002 02
ABLE)			
Federal Light & Traction Company			
Accts. Payable	237	7 53	
Open Account	1 414	4 48	
Accrued Interest on Bonds	90 40	1 25	
Accrued Interest on Notes			
THE TUCSON GAS, ELEC. LT. & PR. CO.			
Open Account	7 058	61	
Accounts Payable	488	3 04	
Accrued Interest on Notes	800	00	
TOTAL ACCOUNTS PAYABLE TO)		
ALLIED COS.			100 399 91
UNADJUSTED CREDITS:			
Tax Liability	1 202	67	
Accrued Interest on Bonds (Ex. F. L. &			
T. Co.)	89	75	
Accident Reserve	383	99	
Appliances Rented Reserve			
Auditing Reserve	240	47	
Bad Debt Reserve			
Depreciation Reserve			·
Donation Reserve Fire Suspense	1 095	18	
Discount Reserve	56	25	
Inventory Reserve		03	
Depreciation Reserve Automobiles	1 166	72	
TOTAL UNADJUSTED CREDITS,			4 852 06
CORPORATE SURPLUS			
Balance December 31, 19			
Surplus per Statement of Profit and Loss			
of All Departments			
TOTAL CORPORATE SURPLUS			
GRAND TOTAL			781 604 89
FARES			

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Additions to Plant and Property Railway Department.

		DATE	FISCAL CURRENT
TUCSO	N RAPID TRANSIT COMPANY	ACQUISITION	YEAR MONTH
ACCT.		5-31-10	From 12-31-20
No.		To 12-31-20	To 1-31-21
ROAD:			
R101	Engineering and Superintendence	8 155 79	7 02
R102	Right of Way	158 00	
R103	Other Land Used in Electric Rail-		
	way Operations	45 85	
R104	Grading	2 256 75	
R105	Ballast	9 746 53	
R106	Ties	115 28	
R107	Rails, Rail Fastenings and Joints	6 337 47	
R108	Special Work	433 81	
R109	Underground Construction		
R110	Paving	1 009 31	
R111	Track Laying and Surfacing	9 382 97	
R112	Roadway Tools	410 77	
R113	Tunnels		
R114	Elevated Structures and Founda-		
	tions	38 41	
R115	Bridges, Trestles and Culverts		
R116	Crossings, Fences, Cattle Guards		
	and Signs		
R117	Interlocking and Other Signal Ap-		
	paratus		
R118	Telegraph and Telephone Lines		
R119	Poles and Fixtures	729 76	
R120	Underground Conduits		
R121	Transmission System		
R122	Distribution System	749 50	
R123	Dams, Canals and Pipe Lines		
R124	Power Plant Buildings		
R125	Sub Station Buildings		
R126	General Office Buildings		
R127	Shops and Car Houses	358 96	

TUCS ACCT. No. ROAD.	ON RAPID TRANSIT COMPANY	DATE ACQUISITION 5-31-10 To 12-31-20	Fiscal CURRENT YEAR MONTH From 12-31-20 To 1-31-21									
R128	Stations, Waiting Rooms and Mis-											
R129	cellaneous Buildings		70 24									
R130	Docks and Wharves											
R131	Power Plant Equipment	130 33										
R132	Sub Station Equipment											
R133	Shop Equipment Park and Resort Property	266 11										
R134	Cost of Road Purchased											
•	QUIPMENT:											
R135	Cars	02 055 01										
R136	Locomotives	23 877 01										
R137	Electric Equipment of Cars	883 20										
R138	Other Rail Equipment	000 20										
R139	Miscellaneous Equipment											
R135a	Auto Buses	3 500 00										
78.	USCELLANEOUS—DURING CON-	3 300 00										
74	STRUCTION:											
R140	Law Expenses	750.00										
R141	Interest	150 00 333 33										
R142	Injuries and Damages	21 00										
R143	Taxes	1 225 05										
R144	Miscellaneous	1 225 05										
10117	TOTAL ADDITIONS—RAILWAY											
	DEPARTMENT	69 823 97	70.04									
[111]	2/ 1/2 61 2/ 2/ 1/ 1/2/ I	00 020 01	70 24 7 02									

Property Gas Department.

Additions to Plant and P	roperty Gas	Department.
	February 28	, 1921.
ACCT.	DATE	- CONTENT
No.	ACQUISITION	
TUCSON RAPID TRANSIT COMPANY	5-31-10	From 12-31-20
G101 ORGANIZATION	То 12-31-20	То 1-31-21
G102 ROYALTIES, FRANCHISES AND		
LICENSES		
GAS PLANT:		
G103 Land Devoted to Gas Operations		
G104 Works and Station Structures		
G105 Holders		
G106 Furnaces, Boilers and Accessories		
G107 Steam Engines		
G108 Gas Engines		
G109 Miscellaneous Power Plant Equip) -	
ment		
G110 Benches and Retorts		
G111 Water Gas Sets and Accessories		
G112 Purification Apparatus		
G113 Accessory Equipment at Works		
DISTRIBUTION:		
G146 Trunk Lines and Mains		
G147 Gas Services		
G148 Gas Meters		
G149 Gas Meter Installation		
G151 MUNICIPAL STREET-LIGHTIN	1G	
0102		
FIXTURES G152 GAS ENGINES AND APPLIANCE	ES	
OTHER EQUIPMENT: G171 Land in Other Departments		
7 01 1		
1 Timber ont		
G173 General Equipment G177 Gas Laboratory Equipment		
G178 Gas Tools and Implements		
G179 Other Tangible Gas Capital		
uiro ocasi		

ACCT	MISCELLANEOUS — DURING CON-													
No.	STRUCTION:													
G181	Engineering and Superintendence													
G182	Law Expenditures													
G183	Taxes													
G184	Interest													
G185	Injuries													
G186	Miscellaneous													
	TOTAL ADDITIONS — GAS DE-													
	PARTMENT													
	SUMMARY OF ADDITIONS to													
	Plant and Property from Date of													
	Acquisition to and incl'd'g													
	Current Month													
	ADDITIONS PER DETAILED													
	SHEET	f - 82												
	Electric Department													
	Railway Department	69 823			24			7 02						
	Gas Department	69 823	97	70	24			7 02						
	TOTAL ADDITIONS ALL DEPART-													
	MENTS													
	ADDITIONS FROM DATE OF													
	ACQUISITION	*** ***	* *	*** ***	* *	69	823	97						
	ADDITION FISCAL YEAR (Ex.													
	Current Mo.)	*** ***	**		24	***	***	**						
	ADDITIONS CURRENT MONTH	*** ***	**	7	02		77	26						
	TOTAL ADDITIONS FROM		v v											
	DATE OF ACQUISITION	*** ***	**	*** ***	**	***	***	**						
	5-31-10 to 2-28-21		**	*** ***	**	69	901	23						
	ADD:	*** ***	**	*** ***	**	010	0.00	20						
	Balance at Date of Acquisition TOTAL PROPERTY AC-					618	909	62						
	1011111													
	COUNTS (Per Balance Sheet)	*** ***	**	*** ***	**	688	810	0.5						
[112]	Sheer)					000	010	85						

Statistics.

Earnings Operated Passenger Track 200 106 195 283 179 41 Total Gross Car Mile Revenue of Single of Revenue per Per Mile Ratio Cents per Cents Dollars 7.63 1.06 1.96 2.85 7.22 .54 .41 .81 February 28, 1921. 27.81 7.15 2.943.87 10.38 1.50 26.31 Last Year 1,000 .106 139 .257 .373 .946 .054 071 3304.79 351.25849.75 3126.95233.71460.951231.29 177.84 Car Mile Revenue of Single Revenue per Per Mile Cents per Cents Dollars Earnings Operated Passenger Track 841 23 188 88 255 200 754 87 7.56RAILWAY DEPARTMENT 1.70 2.29 1.80 6.78 .78 .79 STATISTICS 33.177.43 10.053.48 7.89 3.42 This Year 1,000.027 .224 105 303 .238 897 .103 Ratio Gross of 96.85 3660.52 821.14 382.73 1111.03 870.36 378.41 3282.11Total TOTAL OPERATING EXPENSES Conducting Transportation (Excluding NET EARNINGS FROM OPERA-Maintenance of Way and Structures TUCSON RAPID TRANSIT COMPANY TOTAL GROSS EARNINGS Maintenance of Equipment OPERATING EXPENSES General Expenses TION Power) Power **C**1 က 4 10 c ∞ 6

1	.70)						A	.SY	na	R	ub	ai	z	vs.									
Express Non Revenue	Cars Producing	Etc. Cars																						
Exp	Trail	Cars																						
Passenger	Motor	Cars							50.90															
Express Non Revenue	Cars Producing Total	Etc. Cars		13599	25724	3889	105		43317	816	755			44888	11883	1451	4	ಣ	12610	1.061	8.69	. 03655	4.35	6
Expre	Trail	Cars																						
Passenger	Motor	Cars																						
	Total			7299	37814	3267	27		48407	580	727		49714		11034	1387	4	က	10320	.935	7.44	.0371	4.35	o n
	T		NUMBER OF PASSENGERS:	Revenue (@ .08					SENGERS	Ħ	$P_{\tilde{c}}$	3 TOTAL NUMBER OF ALL PAS-	SENGERS	9 STATISTICS:	O Number of Car Miles Operated	•	2 Maximum Number of Cars Operated	3 Minimum Number of Cars Operated				Cost of Energy per K.		
			10	11	15	13	14	15		16	17	18		19	20	21	22	23	24	25	26	27	28	29

Express Non-Revenue Passenger	Trail Cars Producing Total Motor Trail Cars Producing	Cars Etc. Cars Cars Etc. Cars	17000	.194		14	m		2875				
Passenger	Total Motor	Cars	ed 20000	per Capita .183	ROLL:	Regularly Employed 14	ra Men Employed 3	of Labor Charged to	2990	of Labor Charged to			
			Population Served	Gross Earnings per Capita	MONTHLY PAY	Number of Men	Number of Extra	Total Hours of	"Operation"	Total Hours of	"Construction"		

32 33 34 35 36

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TUCSON RAPID TRANSIT COMPANY.
GENERAL LEDGER ACCOUNTS.
FEBRUARY 28, 1921.

FEDERAL	LIGHT	AND	TRACTION	CO.			
OPEN ACCT.							

		OPEN ACCT.	
Feb.	1.	Balance	1644.99
Feb. 2		Engineering & Supt	
		-	
			1652.01
Feb.	28.	Cash	237.53
		-	
Feb.	28.	Balance	1414.48
THE 7	ruc	SON GAS, ELEC. LT. & PR	. CO.—
		OPEN ACCT.	
Feb.	1.	Balance	6972.50
Feb.	28.	Cash	151.26
		-	
			7123.76
Feb.	28.	Invoices	65.15
		-	
Feb.	28.	Balance	7058.61
[End	orse	d]: Tucson Rapid Transit C	ompany,
Monthly	y Sta	atement. February 28, 1921. M	Ir. E. F.
Jones,	Rece	eiver.	
[End	orge	dl. In the District Court of the	a United

[Endorsed]: In the District Court of the United States, for the District of Arizona. Tucson Electric, Gas and Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant. Report of Receiver. Filed April 4, 1921. C. R. McFall, Clerk. [114]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Memorandum Opinion.

On February 21st, 1919, on application of the creditors, a Receiver was by this Court appointed for the property of the Transit Company and authorized to operate its street railway, which is engaged in the carrying of passengers in the city of Tucson, and the said Receiver has since said date and is now so operating the same.

On April 1st, 1920, the Intervenor Rubiaz filed a petition for intervention herein, setting forth that on the 25th day of June, 1918, prior to the appointment of said Receiver, she had recovered judgment against said Tucson Rapid Transit Company in the Superior Court in and for the County of Pima, State of Arizona, for the sum of Four Thousand Five Hundred (\$4,500.00) Dollars, and costs of suit; that said Receiver then had in his hands certain funds realized by him from the operation of said street railway, and praying that same be impounded for her benefit and applied on said judgment.

On April 26th, 1920, the International Trust Company filed herein a petition in intervention in which petition it was alleged that on March 15th, 1906, the said Transit Company executed its mortgage or deed of trust, payable to the said International Trust Company, on all property, real, personal and mixed that it then had or might [115] thereafter acquire, to secure the payment of a certain bonded indebtedness. That thereafter bonds of the said Transit Company in the sum of One Hundred Fourteen Thousand Eight Hundred (\$114,800.00) Dollars were duly issued and delivered to said intervenor and that said bonds, together with the interest thereon, are still outstanding and unpaid.

This mortgage was duly filed for record in the office of the County Recorder of Pima County, Arizona, as a real estate mortgage but was not executed, acknowledged or recorded as a chattel mortgage.

Said intervenor also prayed that all moneys in the hands of said Receiver, received by him as aforesaid, be impounded for its benefit and paid on its said mortgage.

Equity Rule 37 provides that:

"anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be insubordination to, and in recognition of, the propriety of the main proceeding."

Therefore, both of the intervenors have recognized the propriety of the original proceeding herein and both are (2) bound thereby.

I think it clear that neither of the intervenors had any lien on the money in the hands of the Receiver merely because they had a lien on the real and personal property of the Transit Company, and neither had any right to the money until a petition was filed herein praying that same be impounded for the payment of such liens.

In my opinion the lien of a mortgage executed and recorded in 1906, although not recorded as a chattel mortgage, was and is superior to the judgment lien rendered in 1918.

The Federal Courts have uniformly held that:

"The property essential to the operation of a railroad, including the right of way, roadbed, ties, rails, side-tracks, switches, depots, stationhouses, water-tanks and other fixtures, together with the rolling-stock and other necessary movable appliances, are real estate."

Jones on Mortgages, Seventh Edition, Section 452. [116]

This being so, it was unnecessary that such mortgage should have been recorded as a chattel mortgage, and although the mortgage was a superior lien on the Transit Company's real and personal property to the lien of the judgment, neither had a lien on the moneys realized by the Receiver from the operation of the street railway.

As above stated, the Intervenor Rubiaz, on April 11th, 1920, filed her petition to have the net proceeds of the operation of the street railway company impounded for the payment of her judgment lien. The trust company did not file its petition to have the said moneys impounded until (3) April 26th, 1920. Thus the Intervenor Rubiaz became entitled to the said moneys so received from the operation of the property, over and above operating expenses, from the date of filing her petition to the date of the filing of the petition by the Trust Company, and an order has heretofore been entered directing that the Receiver pay to the said Intervenor Rubiaz the sum of Nine Hundred Sixty and 5/100 (\$960.05) Dollars.

It is my opinion that neither of the intervenors is entitled to receive the net proceeds of the operation of said street railway company prior to April 1, 1920, and that the net proceeds of the operation of said street railway company after April 26th, 1920, should be applied on said mortgage debt upon a foreclosure thereof, in the event there is a foreclosure. In the event the mortgage is not foreclosed, this Court reserves the right to apply such amount of the net proceeds of the operation of said

street railway company as may not be necessary for the operation and the preservation of the property in the hands of the Receiver to the payment of the said judgment lien.

It appearing to the Court from the report of the Receiver herein that at the time the Mayor and Common Council of the City of Tucson, Arizona, granted said Tucson Rapid Transit a franchise to operate its line of street railway over the streets of the city of Tucson, Arizona, it was provided that in the event any of the streets so used by the said street railway company were paved the said street railway company [117] should pave the streets between the rails thereof, (4), and for one foot on each side of the rails, and

It further appearing that recently North Stone Avenue, between the Southern Pacific Company's right of way on Stone Avenue and Third Street, a distance of approximately four blocks, was paved in accordance with law and under the direction of said Council, and

It further appearing that on December 1st the said Mayor and Common Council of the city of Tucson notified the said Tucson Rapid Transit Company, the owner of said street railway company, to pave said Stone Avenue, between the rails thereof and for one foot on each side of such rails, on North Stone Avenue, between said railway tracks and Third Street, and that it is necessary and proper that said work be done in order to preserve

the franchise of the said Tucson Rapid Transit Company,—

IT IS ORDERED AND DECREED that the Receiver herein be and is hereby authorized to advertise for bids for the paving of said Stone Avenue, as in said ordinance and franchise provided, and submit the said bids to the Court for approval or rejection, and if any such bid is approved by the Court, the said Receiver be authorized to enter into a contract for the doing of such work and the same be paid for out of the moneys now in his hands not otherwise necessary for the operation of the said street railway.

IT IS FURTHER ORDERED that said contract be submitted to and approved by this Court before the same shall become binding upon the said Receiver.

Dated at Tucson, Arizona, this 14th day of April, 1921.

WM. H. SAWTELLE,

Judge.

[Endorsed]: Equity—70. The Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and the International Trust Company, a Corporation, Intervenors. Memorandum Opinion. Filed Apr. 18, 1921. C. R. McFall, Clerk. By D. H. McFarland, Deputy. [118]

In the District Court of the United States, in and for the District of Arizona.

E.—70.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Affidavit of A. T. Smith of Service of Copies of Certain Papers.

State of Arizona, County of Pima,—ss.

A. T. Smith, of lawful age, being first duly sworn, deposes and says: That on, to wit, the 26th day of April, 1921, at about the hour of 11:40 A. M. of said day at and within the city of Tucson, County of Pima, State of Arizona, at and within the office of Kingan, Campbell & Connor, attorneys at law and counsel for Tucson Gas, Electric Light & Power Company, a corporation, plaintiff, in the above-entitled action, and for The International Trust

Company, a corporation, intervenor in said aboveentitled action, affiant on behalf of Asma Rubiaz. intervenor in the above-entitled cause, presented to a stenographer duly employed and in the service of said Kingan, Campbell & Connor, two copies of the attached and foregoing original "Answer of Asma Rubiaz, intervenor, to the complaint in intervention of The International Trust Company," and requested of said stenographer acknowledgment of service of copies of said answer of said Rubiaz: that thereupon said stenographer informed affiant that Mr. Connor, a member of said firm, was present and that affiant should serve said copies on said Connor; that immediately thereafter as affiant was leaving said office he met the said Connor in the hall of the building occupied by said law firm of Kingan, Campbell & Connor, and presented to said Connor as one of the members of said firm said original answer of Asma Rubiaz [119] aforesaid together with two copies of said answer and requested acknowledgment of service of copies of said answer on said Tucson Gas, Electric Light & Power Company, a corporation, plaintiff, and said The International Trust Company, a corporation, intervenor, in the above-entitled cause; that said Connor thereupon stated to affiant that he did not know exactly who the firm of Kingan, Campbell & Connor represented in said cause and refused to acknowledge service of said copies of said answer, and thereupon requested affiant to return to

said office of Kingan, Campbell & Connor later in the day; that meanwhile he, the said Connor, would examine the records of the Clerk of the United States District Court in and for the District of Arizona, and ascertain whether or not said firm represented said parties so attempted to be served with said answer (1) as aforesaid, and directed affiant to return after lunch when he, the said Conner, would take the matter up with him, affiant; that thereafter at 1:30 P. M. of said 26th day of April, 1921, affiant, in compliance with direction of said Connor, presented himself at the law offices of said Kingan, Campbell & Conner with said original answer and the two copies thereof, and requested the acknowledgment of service of copies of said answer, whereupon affiant was informed by a stenographer regularly employed in said law office of Kingan, Campbell & Conner that the said Conner had just previously left said law office and that she, the said stenographer, would acknowledge service of said copies of said answer; that thereupon said first stenographer above mentioned informed said lastmentioned stenographer in substance "that is the paper that Mr. Conner refused to sign for," whereupon said second stenographer stated in substance, "Well, if Mr. Conner refused to sign for it I cannot sign for it"; whereupon affiant left said copies of said answer with said second stenographer above mentioned and makes and files this affidavit as proof of service of copies of said answer above

mentioned on the attorneys of said Tucson Gas, Electric Light & Power Company, plaintiff above named, and said The International Trust Company, intervenor above named.

A. T. SMITH.

Subscribed and sworn to before me this 26th day of April, 1921. [120]

My commission expires Febry. 19, 1924.
[Notarial Seal] G. H. LANGWORTHY,
Notary Public. [121]

In the District Court of the United States, in and for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff.

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation, Intervenors.

Answer of Asma Rubiaz, Intervenor, to the Complaint in Intervention of The International Trust Company.

Comes now Asma Rubiaz, intervenor above named, and answering the complaint in intervention of The International Trust Company, says:

I.

Intervenor Asma Rubiaz admits the allegations contained in paragraphs I and II of the complaint of Intervenor The International Trust Company.

II.

Answering paragraphs III and IV of said complaint in intervention of said The International Trust Company, Intervenor Asma Rubiaz admits that the mortgage set out in said complaint was executed and recorded as a Real Estate Mortgage, but denies that said instrument was and alleges that it was not executed and filed as a Chattel Mortgage as provided in Sec. 23, Chapter III, Title 48, running Section 3282 of the Civil Code of the Revised Statutes of the Territory of Arizona, 1901, and Sec. 4124, Chapter IV, Title 35, of the Civil Code of the Revised Statutes of Arizona, 1913, for the reason that (1) the residence of the mortgagor, Tucson Rapid Transit Company, was and is not set out in said mortgage, and even if said mortgage should be held to be a valid chattel mortgage, same was not executed until August 30th, 1918, and was not filed in the office of [122] the County Re-

corder of Pima County, Arizona, until September 4th, 1918, long after the date of the recovery of the judgment of the said Asma Rubiaz, against the said Tucson Rapid Transit Company, to wit, June 25, 1918, and for the reason that said chattel mortgage was and is void as to the said Asma Rubiaz, under the provisions of Section 4126, Chapter IV, Title 35, and Section 3634, Chapter I, Title 29, of the Civil Code of the Revised Statutes of Arizona, 1913; and in this behalf Intervenor Asma Rubiaz alleges that from the said 15th day of March, 1906, and up to the date, to wit, February 21, 1919, when the Receiver herein was appointed and took same into his possession as such Receiver, all of the property of said Tucson Rapid Transit Company was retained by and held in the possession of said Tucson Rapid Transit Company.

TTT.

Intervenor Asma Rubiaz admits the allegations of paragraphs V, VI, VII, VIII, of the complaint of Intervenor The International Trust Company.

TV.

Intervenor Asma Rubiaz denies that Intervenor The International Trust Company has and alleges that it has not a first prior and paramount lien upon all the property, rights, assets, moneys and all property or property rights of the said Tucson Rapid Transit Company, and denies that said The International Trust Company has and alleges that it has not "the right, in order to preserve and pro-

tect the said property of the said mortgagor, to have any of the property or assets of the said Tucson Rapid Transit Company that may be necessary used for the protection and preservation of said property as a whole or in part." (2)

V.

Intervenor Asma Rubiaz denies that Intervenor The International Trust Company has and alleges that it has not "the right to have the funds now in the hands of the Receiver, and all funds that may come into his hands, over and above the necessary expenses of operation and the expense of said receivership, paid upon the * * * indebtedness to it," and denies that said The International Trust Company has and alleges that it has not "an equitable, first and prior lien upon all funds in the hands of said Receiver derived from the operation of said [123] property" of said Tucson Rapid Transit Company.

WHEREFORE, Intervenor Asma Rubiaz prays judgment and an order of the Honorable Court above named conferring the judgment of the said Intervenor Asma Rubiaz as set out in her complaint in intervention herein, as a first and prior lien on the moneys and other personal property of Tucson Rapid Transit Company now in the hands of the Receiver herein, and for a further order that said lien and claim of Intervenor Asma Rubiaz be immediately paid by said Receiver, and for such further orders and judgment as may seem to the

Honorable Court equitable, proper and necessary in the premises.

MOORE & FRAWLEY, RICHEY & RICHEY,

Attorneys for Intervenor Asma Rubiaz.

State of Arizona, County of Pima,—ss.

Asma Rubiaz, being first duly sworn, deposes and says: That she is the identical Asma Rubiaz who is one of the intervenors in the above-entitled suit; that she has read the above and (3) foregoing answer to the complaint in intervention of the International Trust Company, and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters stated on information and belief, and as to those matters she believes it to be true.

ASMA RUBIAZ.

Subscribed and sworn to before me this 26th day of April, 1921.

[Notarial Seal]

A. T. SMITH,

Notary Public.

My commission expires May 12th, 1924.

[Endorsed]: In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and The International Trust Company, a Corporation,

Intervenors. E.-70. Answer of Asma Rubaiz, Intervenor, to the Complaint in Intervention of The International Trust Company. Service of copy of the within acknowledged this - day of April, 1921. Tucson Gas, Electric Light & Power Company. By ———, Its Attorneys. Tucson Rapid Transit Company. By Geo. O. Hilzinger, Its Attorney. The International Trust Company. By — , Its Attorneys. Edwin F. Jones, Receiver. Moore & Frawley and Richey & Richey, Attys. for [124] Intervenor Asma Rubaiz. Filed Apr. 26, 1921. C. R. McFall, Clerk. By D. H. McFarland, Deputy. [125]

In the District Court of the United States, in and for the District of Arizona.

E.—70.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff.

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Exceptions of Intervenor Asma Rubiaz to Rulings of Court in Decree.

This day the Court hands down its memorandum opinion in the above-entitled cause; and now comes Asma Rubiaz, intervenor, by her counsel, Messrs. Moore & Frawley and Messrs. Richey & Richey, and except to said statements, findings, orders and decrees therein set forth and contained in the following, to wit:

1st. "I think it clear that neither of the intervenors had any lien on the money in the hands of the Receiver merely because they had a lien on the real and personal property of the Transit Company, and neither had any right to the money until a petition was filed herein praying that same be impounded for the payment of such liens."

for the reason that said money in the hands of the Receiver was personal property of Tucson Rapid Transit Company and as such was subject to the lien of said Rubiaz as set forth and claimed in her complaint herein, and for the further reason that any debt owed to said receiver by any bank or depository by reason of the (1) deposit of said earnings of said company was "property" and a property right of said company and said receiver, and as such subject to the lien of Intervenor Asma Rubiaz.

2d. "In my opinion the lien of a mortgage executed and recorded in 1906, although not recorded as a chattel mortgage, was and is superior to the judgment lien rendered in 1918. [126]

The Federal Courts have uniformly held that: 'The property essential to the operation of a railroad, including the right of way, roadbed, ties, rails, side-tracks, switches, depots, station-houses, water-tanks and other fixtures, together with the rolling stock and other necessary movable appliances, are real estate.'

Jones on Mortgages, Seventh Edition, Section 452.

This being so it was unnecessary that such mortgage should have been recorded as a chattel mortgage, and although the mortgage was a superior lien on the Transit Company's real and personal property to the lien of the judgment, neither had a lien on the moneys realized by the Receiver from the operation of the street railway."

for the reason that said money in the hands of the receiver was personal property of Tucson Rapid Transit Company and as such was subject to the lien of the said Rubiaz as set forth and claimed in her complaint herein, and for the further reason that any debt owed to said receiver by any bank or depository by reason of the deposit of said earnings of said company was "property" and a prop-

erty right of said company and said receiver, and as such subject to the lien of Intervenor Asma Rubiaz.

3d. "It is my opinion that neither of the intervenors is entitled to receive the net proceeds of the operation of said street railway company after April 26th, 1920, should be applied on said mortgage debt upon a fore-closure thereof, in the event there is a fore-closure."

for the reason that said money in the hands of the Receiver was personal property of Tucson Rapid Transit Company and as such was subject to the lien of said Rubiaz as set forth and claimed in her complaint herein, and for the further reason that any debt owed to said Receiver by any bank or depository by reason of the deposit of said earnings of said company was "property" and a property right of said company and said Receiver, and as such subject to the lien of Intervenor Asma Rubiaz, and was subject to (2) her application and petition for payment of her debt against said Tucson Rapid Transit Company, was subject to no claim or [127] lien of said Intervenor The International Trust Company, Intervenor, or of Tucson Gas, Electric Light & Power Company (which did not pray that same be applied to the payment of any part of the claim it had against said Tucson Rapid Transit Company), and should have been applied to the payment of the debt due from Tucson Rapid Transit Company to said Rubiaz under her claim, petition and prayer for application of a portion of said money to the liquidation of her claim and demand against said Tucson Rapid Transit Company.

4th. IT FURTHER APPEARING that recently North Stone Avenue, between the Southern Pacific Company's right of way on Stone Avenue and Third Street, a distance of approximately four blocks, was paved in accordance with law and under the direction of said council, and

IT FURTHER APPEARING that in December 1st the said Mayor and Common Council of the City of Tucson notified the said Tucson Rapid Transit Company, the owner, to pave said Stone Avenue, between the rails thereof and for one foot on each side of such rails, on North Stone Avenue, between said railway tracks and Third Street, and that it is necessary and proper that said work be done in order to preserve the franchise of the said Tucson Rapid Transit Company."

for the reason that no threat has been made by the Mayor and Common Council of the City of Tucson, Arizona, and nothing appears in the records of this action that said Mayor and Common Council will enforce or attempt to enforce the provisions of said franchise as to said forfeiture and for the further reason that there is not provision of law authorizing or permitting the funds accumulated by the Receiver for said Transit Company to be used to further secure or to enhance the security of said The International Trust Company, Intervenor, The International Trust Company, mortgagee, or for the purpose to which said sum is devoted by reason of said memorandum opinion, order and decree, under the conditions and pleadings in this case. (3)

5th. "IT IS ORDERED AND DECREED that the Receiver herein be, and is hereby authorized to advertise for bids for the paving of the said Stone Avenue, as in said ordinance and franchise [128] provided, and submit the said bids to the Court for approval or rejection, and if such bid is approved by the Court, the said Receiver be authorized to enter into a contract for the doing of such work and the same be paid for out of the moneys now in his hands not otherwise necessary for the operation of the said street railway."

for the reason that the carrying out of such order and decree would absolutely and definitely destroy and render valueless any and all claims, demands, liens or contentions made, urged and sought to be enforced by Intervenor Rubaiz, and there is no authority in law and no foundation of fact to support or sustain such order and decree. All of above exceptions duly made and allowed this 16th day of April, 1921.

WM. H. SAWTELLE, Judge.

[Endorsed]: In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and The International Trust Company, a Corporation, Intervenors. Exceptions by Intervenor Asma Rubiaz to Memorandum Opinion. Filed May 2, 1921. C. R. McFall, Clerk. By D. H. McFarland, Deputy. [129]

In the District Court of the United States, in and for the District of Arizona.

IN EQUITY—No. E.—70.

(Tucson.)

THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Assignment of Errors by Asma Rubaiz, Intervenor.

Now comes the Intervenor, Asma Rubiaz, in the above-entitled cause and having asked for an allowance of an appeal from the decree herein against her, files the following assignment of errors upon which she will rely upon her prosecution of the appeal in the above-entitled cause from the decree made by this Honorable Court on the 14th day of April, 1921.

Τ.

That the Court erred in finding the law against this intervening petitioner.

II.

That on the facts shown by the pleadings, records and documents in this case this intervening petitioner is entitled to a finding and decree in her favor; whereas the Court found as a matter of law against her.

III.

That the finding and decree of the Court are against the law and equity of the case and against the facts and contrary to the same.

IV.

That the Court erred in holding that this intervening petitioner did not have a lien on the net income in the hands of the receiver by virtue of the intervening petitioner's judgment and the laws of the State of Arizona.

V. [130]

That the Court erred in finding that the filing of the petition in intervention by said Asma Rubiaz did not create a lien, in favor of said intervenor, on said net income then in the hands of said receiver.

VI.

That the Court erred in not directing the receiver to pay over to said intervening petitioner an amount sufficient to satisfy her claim in accordance with the prayer of her petition in intervention.

VII.

That the Court erred in ordering a diversion of the net income in the hands of the receiver from the payment of said intervening petitioner's claim.

WHEREFORE, the intervening petitioner prays that the finding and decree of the Court against her be reversed and that said District Court be ordered to enter a decree directing the payment to intervenor Asma Rubaiz as prayed for in her intervening petition filed in this action.

RICHEY & RICHEY, MOORE & FRAWLEY,

Attorneys for Intervenor, Asma Rubaiz. (2)

[Endorsed]: In Equity (Tucson) No. E.—70. District Court of the United States for the District of Arizona. The Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, De-

fendant, and Asma Rubaiz and the International Trust Company, a Corporation, Intervenors. Assifnment of Errors by Asma Rubaiz, Intervenor. Filed Sep. 7, 1921. C. R. McFall, Clerk. [131]

In the District Court of the United States, in and for the District of Arizona.

IN EQUITY—No. E.—70.

(Tucson.)

THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation, Plaintiff.

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,
Intervenors.

Petition for Appeal.

To the Honorable WILLIAM H. SAWTELLE, Judge of the District Court of the United States in and for the District of Arizona:

The above-named Asma Rubaiz feeling aggrieved by the decree rendered and entered in the aboveentitled cause on the 14th day of April, A. D. 1921, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and she prays that her appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to required security to be required by her be made.

RICHEY & RICHEY, MOORE & FRAWLEY,

Attorneys for Intervenor Asma Rubiaz,

The foregoing petition of appeals is allowed and bond as required by law shall be given in the sum of \$500.00.

This 30th August, 1921.

WM. H. SAWTELLE,

Judge.

[Endorsed]: [132] In Equity (Tucson)—No. E.—70. District Court of the United States for the District of Arizona. The Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and the International Trust Company, a Corporation, Intervenors. Peti-

tion for Appeal. Filed Sept. 7, 1921. C. R. Mc-Fall, Clerk. [133]

In the District Court of the United States in and for the District of Arizona.

E.-70-TUCSON.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Citation on Appeal (Copy).

The United States of America,—ss.

- To The Tucson Gas, Electric Light & Power Company, and Messrs. Kingan & Campbell, Its Attorneys,
- To Tucson Rapid Transit Company and George G. Hilzinger, Its Attorney,
- To The International Trust Company, and Messrs.
 Kingan & Campbell, Its Attorneys, and
- To Edwin F. Jones, Receiver, Tucson, Arizona, GREETING:

You and each of you, are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco in the State of California, on the 26th day of October, 1921, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the District of Arizona, from a final decree, signed, filed, and entered on the 14th day of April, 1921, in that certain suit, being In Equity No. E.—70, wherein Asma Rubiaz, Appellant, is intervenor, and Appellee Tucson Gas, Electric Light & Power Company is Plaintiff, and Appellee Tucson Rapid Transit Company is defendant, and Appellee The International Trust Company, is intervenor, and Appellee Edwin F. Jones is Receiver, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should [134] not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAW-TELLE, United States District Judge for the District of Arizona, this 26th day of September, 1921, and of the Independence of the United States one hundred forty-six.

WM. H. SAWTELLE,

United States District Judge for the District of Arizona. (2)

[Endorsed]: No. E.-70—Tuçson. District Court of the United States for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and the International Trust Company, a Corporation, Intervenors. Citation on Appeal. Filed Sep. 26, 1921. C. R. McFall, Clerk. By Preston Turner, Deputy.

I hereby, this 26th day of September, 1921, accept due personal service of this citation on behalf of Tucson Gas, Electric Light & Power Company and International Trust Company, Appellees.

KINGAN, CAMPBELL & CONNOR,
Attorneys for Said Appellees.

I hereby, thos 26th day of September, 1921, accept due personal service of this citation on behalf of Tucson Rapid Transit Company, Appellee.

GEO. O. HILZINGER, Attorney for Said Appellee. (B)

I hereby, this 26th day of September, 1921, accept due personal service of this citation.

EDWIN F. JONES, Receiver. (B) [135] In the District Court of the United States in and for the District of Arizona.

E.-70—TUCSON.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,
Intervenors.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Asma Rubaiz, as principal, and John Nelson and N. J. King, as sureties, of the County of Pima, State of Arizona, are held and firmly bound unto Tucson Rapid Transit Company, a corporation, Tucson Gas, Electric Light & Power Company, a corporation, The International Trust Company, a corporation, and Edwin F. Jones, Receiver, in the sum of Five Hundred (\$500.00) Dollars, lawful money of the United States of America, to be paid to them and their respective executors, ad-

ministrators, successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, by these presents.

Sealed with our seals and dated this 23d day of September, 1921.

WHEREAS, the above-named Asma Rubaiz has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the United States District Court for the District of Arizona, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named Asma Rubaiz shall prosecute her said appeal to effect and answer her costs if she fails to make good her plea then this obligation shall be void; otherwise to remain in full force and effect.

ASMA RUBAIZ,
By E. B. FRAWLEY,
Agent,
JOHN NELSON,
M. J. KING. [136]

State of Arizona, County of Pima,—ss.

On the 23d day of September, 1921, personally appeared before me John Nelson and N. J. King, respectively known to me to be the persons described in and who duly executed the foregoing

instrument as parties thereto and respectively acknowledged each for himself and not one for the other, that they executed the same as their free act and deed for the purposes therein set forth.

And the said John Nelson and M. J. King being respectively by me duly sworn, says, each for himself and not one for the other that he is a resident and property holder of the said county of Pima, State of Arizona, and that he is worth the sum of Five Hundred (\$500.00) Dollars over and above his just debts and legal liability and property exempted from execution.

JOHN NELSON. M. J. KING.

Subscribed and sworn to before me this 23d day of September, 1921, by John Nelson and M. J. King.

[Seal]

A. T. SMITH,

Notary Public.

My commission expires May 12, 1924.

The within bond is approved both as to sufficiency and form this 26th day of September, 1921.

WM. H. SAWTELLE,

United States District Judge for the District of Arizona.

[Endorsed]: No. E.-70—Tucson. District Court of the United States, for the District of Arizona, Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a corporation, Defendant, and Asma

Rubaiz and The International Trust Company, a Corporation, Intervenors. Bond on Appeal. Filed Sep. 26, 1921. C. R. McFall, Clerk. By Preston Turner, Deputy. [137]

In the District Court of the United States in and for the District of Arizona.

E.-70-TUCSON.

At a regular term, to wit, the November, 1919, term, of said court, held at the courtroom of said court in the City of Tucson, State and District of Arizona, on Monday, the 5th day of April, 1920—Honorable WILLIAM H. SAWTELLE, Presiding.

(Minute Entry April 5, 1920.)

THE TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Minutes of Court—April 5, 1920—Order Allowing Asma Rubaiz to File Petition, etc.

IT IS ORDERED, that the petitioner herein, Asma Rubiaz, be and she is hereby allowed to file

petition herein to recover judgment in the State Court.

AND IT IS FURTHER ORDERED, that all adverse parties be allowed twenty days within which to file answer and other pleadings to such petition.

[138]

In the District Court of the United States in and for the District of Arizona.

E.-70—TUCSON.

At a regular term, to wit, the November, 1920, term of the District Court of the United States for the District of Arizona, held at the court-rooms of said court in the City of Tucson, State and District of Arizona, on Thursday, the 14th day of April, A. D. 1921—Honorable WILL-IAM H. SAWTELLE, Presiding.

(Minute Entry April 14th, 1921.)

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Minutes of Court—April 14, 1921—Exception of Asma Rubaiz to Adverse Rulings of Court.

Comes now Messrs. Richey & Richey, Solicitors for the Intervenor, Asma Rubiaz, and duly note exception of the said petitioner to the adverse rulings of the Court contained in the decree this day rendered by the Court in this cause. [139]

In the District Court of the United States for the District of Arizona.

E.-70—TUCSON.

At a regular term, to wit, the May, 1921, term of said court, held at the courtrooms of said court in the City of Tucson, State and District of Arizona, on Tuesday, the 30th day of August, A. D. 1921—Honorable WILLIAM H. SAWTELLE, Presiding.

(Minute Entry August 30, 1921.)

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Minutes of Court—August 30, 1921—Order Allowing Appeal and Fixing Amount of Bond.

It is ordered that the petition of the Intervenor herein, Asma Rubiaz, for an order allowing an appeal to the Circuit Court of Appeals for the 9th Circuit at San Francisco, from a decree rendered by this Court in the above-entitled cause on the 14th day of April, 1921, be and the same is hereby granted, and said appeal allowed upon the giving of bond by said petitioner as required by law, in the sum of Five Hundred Dollars (\$500.00). [140]

In the District Court of the United States for the District of Arizona.

E.-70-TUCSON.

At a regular term, to wit, the November, 1919, term of said court, held at the courtrooms of said court in the City of Tucson, State and District of Arizona, on Thursday, the 29th day of April, A. D. 1920—Honorable WILLIAM H. SAWTELLE, Presiding.

(Minute Entry of April 29th, 1920.)

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

vs.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant.

Minutes of Court—April 29, 1920—Order Allowing International Trust Company Leave to Intervene.

The matter of the application of International Trust Company for leave to intervene coming on for hearing this day, no objection being made there-to,—

IT IS ORDERED: That the petition be and the same is hereby granted, and the said International Trust Company is allowed to intervene in this cause. [141]

In the District Court of the United States in and for the District of Arizona.

E.-70—TUCSON.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Praecipe of Portions of Record to be Incorporated into Transcript on Appeal.

To the Clerk of the District Court of the United States, in and for the District of Arizona:

Notice is hereby given by Asma Rubiaz, intervenor and appellant, that she deems the following papers and portions of the record necessary to present the questions involved on appeal to the United States Court of Appeals for the Ninth Circuit, and request is hereby made that you forward to said last-mentioned court the following parts of said record as your transcript on appeal:

- 1. Complaint.
- 2. Answer.
- 3. Order appointing Receiver.
- 4. All reports of Receiver.
- 5. Notice of motion to intervene and intervening petition of appellant Asma Rubiaz.
- 6. Order granting Asma Rubiaz petition to intervene.
- 7. Notice of motion of International Trust Company to intervene.
- 8. Petition in intervention of International Trust Company.
- 9. Answer of Tucson Gas, Electric Light and Power Company to intervening petition of Asma Rubiaz. [142]
- 10. Answer of Receiver to intervening petition of Asma Rubiaz.
- 11. Answer of Tucson Rapid Transit Company to intervening petition of Asma Rubiaz.
- 12. Order granting International Trust Company permission to intervene.
- 13. Answer of Receiver to intervening petition of International Trust Company.
- 14. Notice of motion and motion of Asma Rubiaz to dismiss complaint of International Trust Company, to strike out answer of Tucson Rapid Transit Company, and to strike out answer of Tucson Gas, Electric Light & Power Company.

- 15. Order to Receiver to make partial payment to Asma Rubiaz.
- 16. Memorandum opinion of Judge Sawtelle dated April 14, 1921.
- 17. Answer of Asma Rubiaz to complaint in intervention of International Trust Company.
- 18. Exceptions of Asma Rubiaz to memorandum opinion.
- 19. Petition for appeal of Asma Rubiaz.
- 20. Assignment of errors of Asma Rubiaz.
- 21. Bond on appeal.
- 22. Citation on appeal.
- 23. And all other papers, records and minute entries in said case save and excepting Receiver's bond, order fixing compensation of Receiver, and briefs of counsel.

RICHEY & RICHEY, MOORE & FRAWLEY,

Attorneys for Intervenor and Appellant, Asma Rubiaz.

[Endorsed]: No. E.—70 (Tucson). In the District Court of the United States, in and for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubiaz and The International Trust Company, a Corporation, Intervenors. Praecipe of portions of record to be incorporated into Transcript on Appeal. Filed Sep. 26, 1921. C. R. Mc-Fall, Clerk. By Preston Turner, Deputy. [143]

Copy of within praccipe received this 26th day of September, 1921.

KINGAN, CAMPBELL & CONNOR,

Attorneys for Tucson Gas, Electric Light & Power Co. and International Trust Company.

Copy of the within praccipe received this 26th day of September, 1921.

GEO. O. HILZINGER,

Attorney for Tucson Rapid Transit Company.

Copy of the within praecipe received this 26th day of September, 1921.

EDWIN F. JONES.

В.,

Receiver. [144]

In the District Court of the United States for the District of Arizona.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBIAZ and THE INTERNATIONAL TRUST COMPANY, a Corporation, Intervenors.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America, District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said United States District Court for the District of Arizona, including the records, papers and files in the case of Tucson Gas, Electric Light & Power Company, a corporation, Plaintiff, vs. Tucson Rapid Transit Company, a corporation, defendant, and Asma Rubiaz and The International Trust Company, a corporation, Intervenors, said case being number Equity 70—Tucson on the docket of said court.

I further certify that the foregoing 144 pages, numbered from 1 to 144, inclusive, constitute a full, true and correct copy of the record, and of the assignment of errors and all proceedings in the above-entitled cause, as set forth in the praecipe filed in said cause and made a part of this Transcript as the same appears from the originals of record and on file in my office as such clerk.

And I further certify that there is also annexed to said Transcript the original citation issued in said cause.

I further certify that the cost of preparing and certifying to said record, amounting to Fifty and 95/100 Dollars (\$50.95), has been paid to me by the above-named Intervenor, (appellant).

WITNESS my hand and the seal of said court this 20th day of October, 1920.

[Seal] C. R. McFALL,

Clerk of the United States District Court, District of Arizona. [145]

In the District Court of the United States, in and for the District of Arizona.

E.—70—TUCSON.

TUCSON GAS, ELECTRIC LIGHT & POWER COMPANY, a Corporation,

Plaintiff,

VS.

TUCSON RAPID TRANSIT COMPANY, a Corporation,

Defendant,

and

ASMA RUBAIZ and THE INTERNATIONAL TRUST COMPANY, a Corporation,

Intervenors.

Citation on Appeal (Original).

The United States of America,—ss.

To The Tucson Gas, Electric Light & Power Company, and Messrs. Kingan & Campbell, Its Attorneys,

- To Tucson Rapid Transit Company, and George G. Hilzinger, Its Attorney,
- To The International Trust Company, and Messrs. Kingan & Campbell, Its Attorneys, and
- To Edwin F. Jones, Receiver, Tucson, Arizona, GREETING:

You, and each of you, are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, on the 26th day of October, 1921, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the District of Arizona, from a final decree signed, filed, and entered on the 14th day of April, 1921, in that certain suit, being in Equity No. E.—70, wherein Asma Rubaiz, Appellant, is intervenor, and Appellee, Tucson Gas, Electric Light & Power Company is plaintiff, and Appellee Tucson Rapid Transit Company [146] is defendant, and appellee, the International Trust Company, is intervenor and appellee, Edwin F. Jones, is Receiver, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAW-TELLE, United States District Judge for the District of Arizona, this 26th day of September, 1921,

and of the Independence of the United States One Hundred Forty-six.

WM. H. SAWTELLE,

United States District Judge for the District of Arizona. [147]

[Endorsed]: No. E.—70—Tucson. District Court of United States for the District of Arizona. Tucson Gas, Electric Light & Power Company, a Corporation, Plaintiff, vs. Tucson Rapid Transit Company, a Corporation, Defendant, and Asma Rubaiz and the International Trust Company, a Corporation, Intervenors. Citation on Appeal. Filed Sep. 26, 1921. C. R. McFall, Clerk. By Preston Turner, Deputy.

We hereby, this 26th day of September, 1921, accept due personal service of this citation on behalf of Tucson Gas, Electric Light & Power Company and International Trust Company, Appellees.

KINGAN, CAMPBELL & CONNER,

Attorneys for said Appellees.

I hereby, this 26th day of September, 1921, accept due personal service of this citation on behalf of Tucson Rapid Transit Company, appellee.

GEO. O. HILZINGER, B.,

Attorney for said Appellee.

I hereby, this 26th day of September, 1921, accept due personal service of this citation.

EDWIN F. JONES, B.,

Receiver.

[Endorsed]: No. 3791. United States Circuit Court of Appeals for the Ninth Circuit. Asma Rubaiz, Appellant, vs. The Tucson Gas, Electric Light and Power Company, a Corporation, Tucson Rapid Transit Company, a Corporation, The International Trust Company, a Corporation, and Edwin F. Jones, as Receiver, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed October 24, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien, Deputy Clerk.

